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WARD, ROBERT PLUMER

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DATE:

1838

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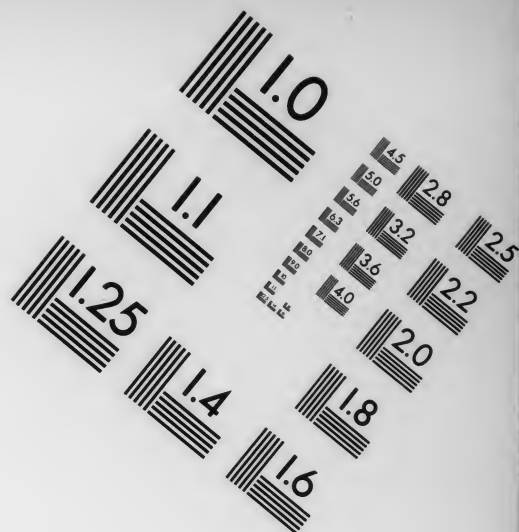
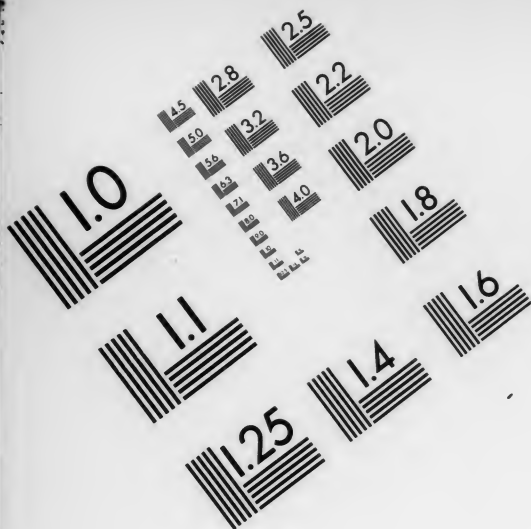


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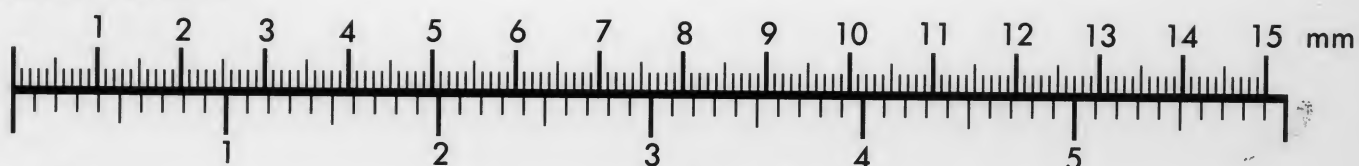
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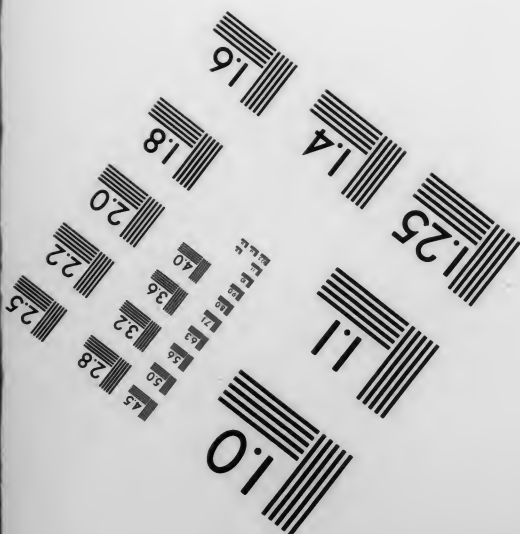
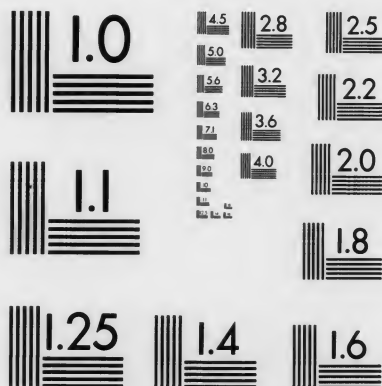
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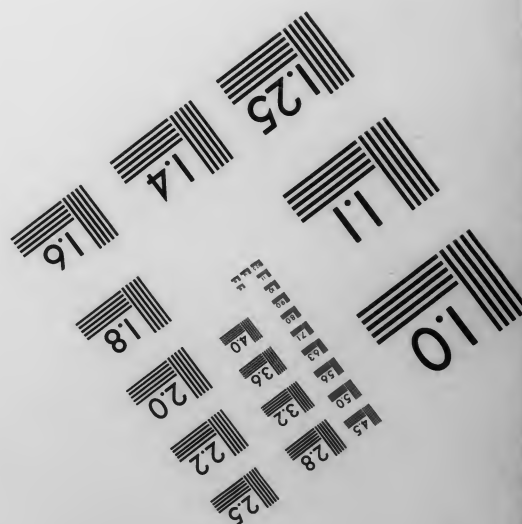
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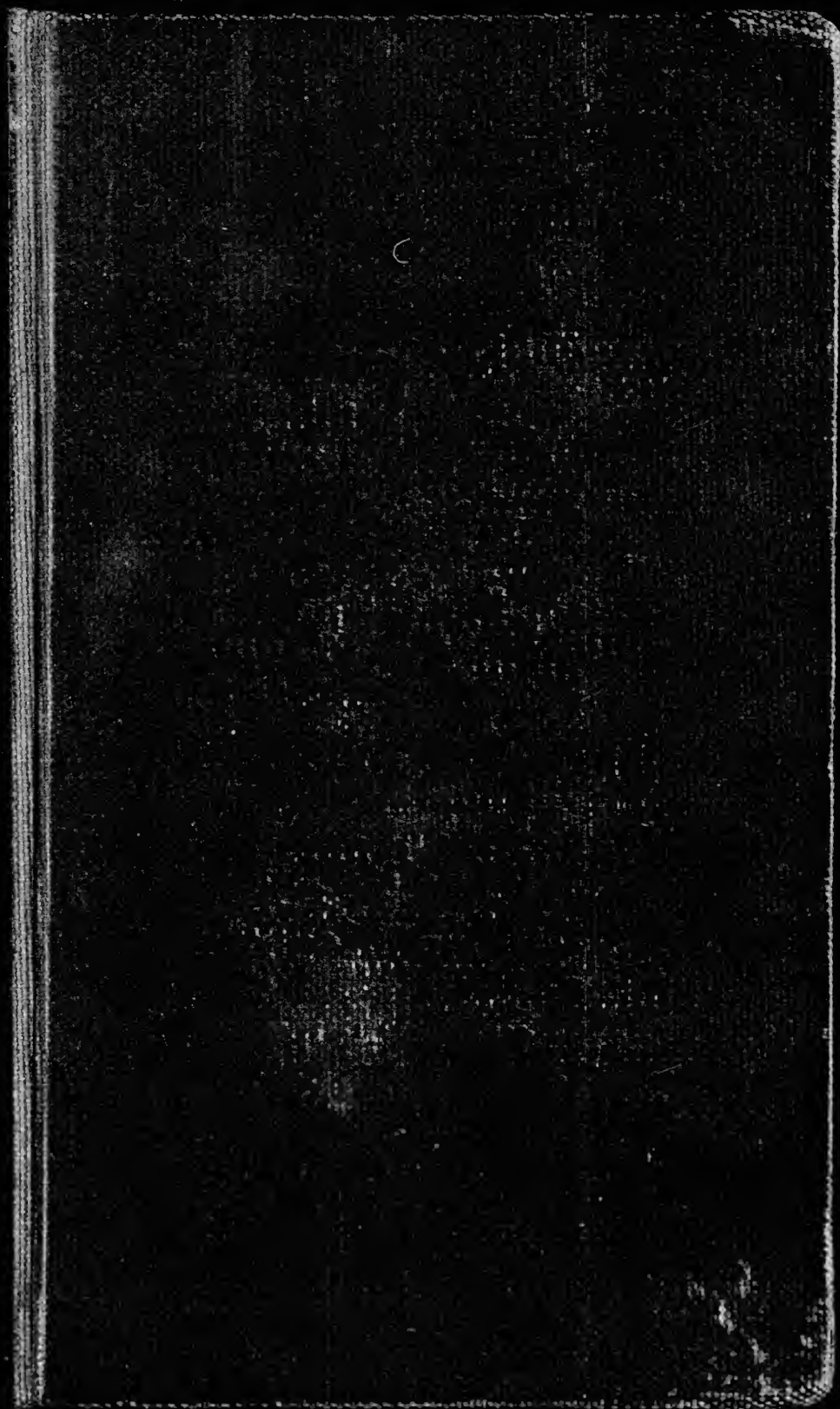


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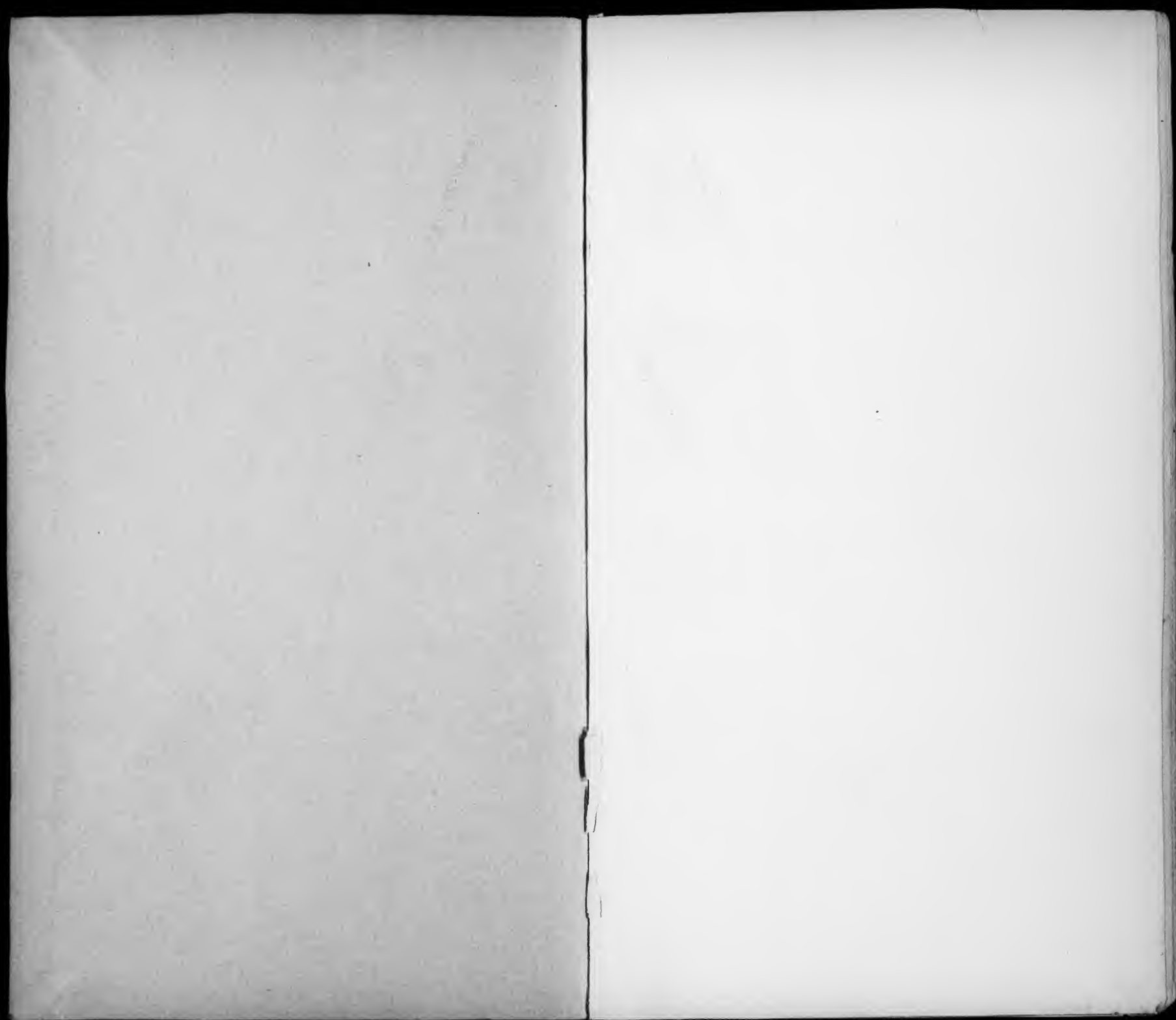




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AN

HISTORICAL ESSAY,

&c.

VOL. I.

AN
HISTORICAL ESSAY

ON
THE REAL CHARACTER AND AMOUNT OF THE
PRECEDENT

OF
THE REVOLUTION OF 1688:

IN WHICH THE OPINIONS OF
MACKINTOSH, PRICE, HALLAM, MR. FOX, LORD JOHN RUSSELL,
BLACKSTONE, BURKE, AND LOCKE,
THE TRIAL OF LORD RUSSELL, AND THE MERITS
OF SIDNEY,
ARE CRITICALLY CONSIDERED.

ADDRESSED TO
THE RIGHT HONOURABLE CHARLES WILLIAMS WYNN,
M.P. FOR MONTGOMERYSHIRE.

BY R. PLUMER WARD, ESQ.
AUTHOR OF "TREMAINE."

Opinionum commenta delet dies,
Naturali iudicia confirmat.

IN TWO VOLUMES:

VOL. I.

LONDON:

JOHN MURRAY, ALBEMARLE STREET.

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PREFATORY REMARKS.

I COULD have wished that the following work had been cast in a different form, for perhaps its most interesting parts, if any are interesting, will be found in the Appendix, and an appendix, except with a view to mere reference, is seldom read. Yet the work being in the form of an almost continuous narration, or, at least, of a letter to the enlightened friend to whom it is addressed, I could not conveniently stop its current, to make an excursion into a criticism of the tenets of Mr. Fox, or Locke, or the guilt or innocence of Lord Russell. Yet these, perhaps, are the most important and interesting parts of the whole volume, and I beseech the reader's attention to them accordingly.

While this work is printing, the news of the events in Canada is arrived. All we can

say of it is, that if there wanted the most complete example of the dangers, in practice, of the precepts which we have been combating, eminently of those respecting the *reformatory revolt* broached by Sir James Mackintosh, it is here supplied to our hand.

Gilston Park, Dec. 30. 1837.

THE AUTHOR.

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ERRATA.

VOL. I.

- Page 1. line 5. *for* "who admires," *read* "whom I admire for."
63. *to* "This was the head and front of the offence," *add*
 "as contained in the petition."
66. last line, *for* "judicial," *read* "executive."
67. line 16. *for* "as," *read* "an."
84. line 13. *for* "Fivirden," *read* "Twisden."
88. line 8. *of* note, *for* "indicted," *read* "tried."
89. line 11. *for* "treason," *read* "evidence."
128. line 9. *after* "reason," *add* "against it."
163. line 22. *for* "Whig," *read* "Whigs."
215. line 8. *for* "this," *read* "his."
285. line 9. *for* "his precious father-in-law," *read* "his son's
 precious father-in-law."

VOL. II.

- Page 87. line 23. *for* "daring attempting," *read* "daring to attempt."
74. line 2. *for* "republicanism," *read* "democracy."

AN

HISTORICAL ESSAY,

&c. &c.

MY DEAR SIR,

As an old friend, a friend in public and in private, with whom on questions the most stirring, and vital to the security of society, when most old friends are divided, I believe I have the good fortune mainly to agree; and more particularly as a friend whom I admire for your correct and deep knowledge of the Constitution, and the firmness you have always shown in defending it, perhaps I may be excused for addressing you on some of the points of dispute, which, after a century and a half's seeming settlement, appear in our ill-fated Country to be more unsettled, or, at least, more agitated, than ever.

What I particularly advert to, are those, what I may call *Revolutionary* principles, which among all ranks, in all places, and at all times—among men, women, and children, morning, noon, and night—are debated with more or less acrimony, (but generally

VOL. I.

* B

with a great deal,) producing divisions among friends and families, setting sons against fathers, and making fathers wish their sons had never been born; which seem at present to be undermining all the happy securities of life, and

“fright the Isle from her propriety.”

One would have thought that all the dangerous and visionary theories in regard to the origin of Governments; the rights of kings, whether supposed divine and indefeasible, or derived by election from the people; the right of resistance and insurrection at the will of that people, and their power to *try* and to punish sovereigns, as the French Assembly did by Louis XVI., and as it was supposed that we did by Charles I.;—one would have thought, I say, that all these questions, and the nature of the much-abused term, *the Sovereignty of the People*, had long been set at rest, and buried in the graves of those who agitated them with so much ability and zeal on both sides.

I certainly never expected, after the miseries and atrocities of the French Revolution had spent their force, and men had recovered from the delirium which had blinded them, and put the abuse of liberty to shame, that the rash and daring principles of Payne, Price, and others, of a right under the law, or from history, to “choose our own governors, to cashier them for misconduct, and to frame a government for ourselves,”—that these principles should be

revived, and preached, and acted upon, or at least recommended, as the known and admitted axioms of the Constitution.

Yet the question of our great and happy Revolution seems “never ending, still beginning;” and there are not wanting high, and respectable names, adorned with scholarship and research, and invulnerable to any reproach of factious, or rebellious designs, as well as others to which the contrary may be evidently imputed, which advocate and disseminate these dangerous doctrines.

Used and acted upon as they are, by the mischievous and restless spirit which pervades most ranks, and is, unhappily, rather encouraged than resisted by those who ought to know better, they tend most markedly, and therefore most unhappily, to unsettle all hope or expectation of again seeing the sunshine of quiet in these agitated realms.

Am I wrong in saying those who *should know better*, when a man of accomplished mind and superior mould, — a man believed by all to be the soul of honour, and distinguished by education and ability as much as by birth, rank, and fortune, — when such a man, a peer, and Prime Minister, proclaimed from his place in parliament, that the bishops should put their houses in order; meaning (for that was the clear inference,) that otherwise they should surely die; and when the same person held, that he was not a wise man who did not legislate in the spirit of the times, that spirit, at least in great numbers, being, as

we know, the destruction of the Church, and the subversion of the Constitution.

It is in vain that this eminent person, or his friends for him, say, that when he uttered these very faulty maxims, he did not believe such to be the spirit he alluded to.

The maxim was general, and had it been pursued, he must have abided all consequences.

Whether, if he held an opinion of its innocency when he broached it, he holds it now, is a question which may be answered by his having felt forced by principle, and real fears for a country he loves, to abandon the helm, and with it probably the doctrine itself.

We ought, therefore, to respect him for honour's sake.

But there are others, whose conduct, as well as political preaching, resembles the infatuation of some men, who will not believe in the reality of an earthquake, until they are buried in its ruins.

These hold tenets which they call and believe to be constitutional law, and which, especially in times such as I have described, might and may lead to consequences so disastrous, that you will possibly excuse me if I invite you to a consideration of the grounds of their opinions.

I am the more impelled to this from the circumstance that some of them are men, who from their abilities and their genius, their learning and their accomplishments, are fit to be regarded as

no inconsiderable authorities on the side they have taken.

At the head of these I should place a person, whom, I believe, both of us admired, when alive, as an eloquent rhetorician, philosophic writer, and amiable man, though we might not follow him through half the conclusions he has ventured upon, in the course of a long and busy life, valuable to letters and to ethical, if not to political science.

You will perhaps at once perceive, that I allude to the late Sir James Mackintosh.

His last work, "the History of the Revolution of 1688," has been perused by me with all that deference and interest, which any work of his must always command. Never was a fuller mind, or poured out with more facility, warmth, or energy on any subject he chose to embrace; but more particularly that which had engaged and absorbed his earliest attention, and touched and elevated his youthful conceptions to a degree which never subsided, (as we see by the work before us,) though advanced to, what may be called, old age.

I mean the principles of that strong, vehement, and eloquent ebullition, which first made him known to fame, and which all must admire, though few may approve.

The *Vindiciae Gallicae* indeed will ever be read as a first-rate production of genius, however it may be blamed for rash and wild theories, and as a defence of errors in practice, leading to horrors which no

subsequent advantages could ever compensate, much less excuse.

These principles, or at least the defence of many of their consequences, were afterwards, we are told, abandoned by him, or ceased to be brought forward as his ruling motives of action in his brilliant career.

On one eminent occasion, indeed, (the defence of Peltier for a libel upon Buonaparte,) the crimes of the principal instigators of the Revolution were blazoned and held up to just detestation, with a fervour as well as depth, which few could equal, none exceed; and, but for the publication in question, I, for one, should have been happy to think that the dangerous, and, as I think, untenable principles of the *Vindiciæ Gallicæ* had been fairly and sincerely recanted.

But, it seems, this is not so.

In the history of our Revolution, many of the dogmas which governed and caused that of France, are not only upheld, but impressed with undisguised force, as truths in political science not to be disputed; and the all-engrossing, all-reaching, inalienable *ir-responsible* power of the *people*, (that nondescript and ill-defined class of beings,) who, without being controlled themselves, are to control every one else, (even the laws and constitution, and of course their sovereign,) this power is not only given them, but every use of it defended, and the impossibility of an abuse of it demonstrated; so that while the tyranny of the most tyrannous despots is made to fall before

them, a tyranny exceeding all despotism is exercised by them, as lawful, justifiable, and not to be resisted.

We are told that kings can do no wrong. But here the maxim is reversed: kings may be dethroned, and killed, (for war may be waged against them,) while the *people* (because people) must be always right, just, and innocent. These, from what I am able to collect from his work, are the *principles* of the British Constitution, professed and supported by our accomplished, but surely mistaken friend. I do not mean, that in so many words he has laid down the positions I have detailed; but, from many direct assertions, and many plain inferences from the propositions he holds, such are the opinions to be collected.

For in various examples,

We collect how little in reality the visions of the *Vindiciæ Gallicæ*, in regard to the absolute despotism of whatever is meant by the mystic term *people*,—

“*Monstrum horrendum, informe, ingens, cui lumen ademptum,*”

—how little this has been sobered down by age, or qualified by experience.

Of this we shall have abundant proofs, as well as what beautiful theories may be erected, fair to the eye, yet based upon such sandy foundations as cannot for a moment stand the touch of the practical statesman.

As a proof,

Weigh the consequences of the following sentences against the specious language in which they are conveyed:—

“It must be owned that in civilized times mankind have suffered less from a mutinous spirit, than from a patient endurance of *bad government*.”

Is this proved by the Revolution of France, or the civil war in England?

Again. “A nation may justly make war for the honour of her flag, or for dominion over a rock, if the one be insulted, and the other unjustly invaded. But if these sometimes faint and remote dangers justify an appeal to arms, shall it be blamed in a people who have no other chance of vindicating the right to worship God according to their consciences, to be exempt from imprisonment and exaction at the mere will and pleasure of one, or a few; to enjoy as perfect a security for their persons, for the *free exercise* of their industry, and for the undisturbed enjoyment of its fruits, *as can be devised by human wisdom* under equal laws and a pure administration of justice?”*

Thus, because every person in a nation has not as *perfect security as can be devised by human wisdom* for the free exercise of his religion and industry, he may immediately take arms; and parliamentary taxes, which are imposed by a comparative few, and the

* Hist. Revol. vol. ii. p. 54. Paris edit.

restrictions upon trade by apprenticeship, or the navigation or revenue laws, justify revolt!

If these are Sir James's notices, what wonder if his Continuator bringing his history to perfection, and talking of a forcible resistance to oppression, holds that the *lawfulness* of it constitutes the main strength of every opposition to mis-government!*

Here the very thin veil, which had hitherto perhaps disguised the full extent of the doctrine, seems to be dropped, and the *lawfulness* of forcible resistance (that is, a right under the Constitution,) is proclaimed in unequivocal terms.

Reason, prudence, moral necessity, natural self-defence against unbearable illegal oppression, are departed from as too undefined and ambiguous authority: and it is boldly assumed that *mis-government* simply, (which by no means implies either oppression or illegal usurpation,) will *lawfully* justify rebellion.

This principle is carried still farther by Sir James himself, which we shall see more at large when we come to examine his doctrine of what he calls A REFORMATORY REVOLT; meaning that although the sovereign power, wherever it may reside, be administered according to law, yet if it restrain liberty in the opinion of those subjected to it, they may rise in arms to obtain an *extension* of it.

Though far from going to such lengths, yet in the doctrine of the right of resistance generally, he seems

* Hist. Revol. vol. ii. p. .

supported by the lucubrations of another very eminent but more sober asserter of this great privilege of the people; and the wildness about mis-government, (at least if I read him right,) seems carried so far, that even what may be thought unwise policy in foreign affairs, though unaccompanied by oppression, may be a reason for revolution.

Yet Mr. Hallam is so fair and moderate in his opinions, so deep in his researches, and so generally correct, that possibly I may have mistaken him.

I, however, understand *one* of his reasons for the expulsion of James to be, the *impossibility of his ever being persuaded to join the league of Augsburg against Louis XIV.*

England's natural position, says he, would be to become a leading member of that confederacy.

But James's prejudices opposed. "It was therefore the main object of the Prince of Orange to strengthen the alliance, by the vigorous co-operation of this kingdom; *and with no other view*, the emperor and even the pope had *abetted his undertaking*."

"Both with respect, therefore, to the Prince of Orange and to the English nation, James was to be considered as an enemy, whose resentment could never be appeased, *and whose power consequently must be wholly taken away*."

I do not mean to say that in these passages, had there been no other cause for taking arms by his subjects, Mr. Hallam asserts, that James might have been *legitimately* attacked; but, at least, it should seem that

his foreign policy entered far into the reasons for driving the Revolution to the extremities that ensued.

The object of the insurrection might possibly have been satisfied with less than dethronement; but the continental politics of William, according to Mr. Hallam, made it necessary to force on that catastrophe.

The emperor and the pope are said in terms to have *abetted* the enterprise that was to produce the Revolution, *from no other view*: and thus a difference of opinion on foreign politics between a king and his subjects, may be made one of the reasons, at least, that justify insurrection.

Do not these loose speculations, both of Mr. Hallam and Mackintosh (with proper and sincere deference to them both, be it said), make us recal with more respect than ever the sound sentiment of Burke: "no government could stand a moment if it could be blown down with anything so loose and indefinite as an *opinion* of misconduct."

Before, however, we proceed to examine the several specific conclusions, drawn from the specific facts which occur in the History, it may be convenient to canvass the subject as Sir James treats it in an express chapter on the "Doctrine of Obedience, and Right of Resistance."

Such is its formidable title.*

I shall therefore, with your permission, divide what

* Mackintosh's History of the Revolution of 1688, chap. x.

I have to trouble you with, on what may be called the *law* of the case, into three sections.

I. As to the general proposition of the Right of Resistance at the pleasure of the people, and the cases when that right may be exercised.

II. As to the famous question of the Sovereignty of the People itself, and as to their supposed *compact* with their rulers.

III. As to the exact amount and force of the historical precedent afforded by the Revolution of 1688, and the doctrines raised upon its various incidents.

To these I may beg to add two more on the character of the Revolution, and on the means by which it was brought about, with a view to ascertain whether the glory ascribed to it as an example of the principles of philosophical liberty brought into practice is really deserved.

In doing this I know full well the boldness of my undertaking;—what difficulties, what opposition, what prejudices I shall have to encounter; how little likely I am to succeed; how little popular the endeavour, if I do. But as my opinion is not one of yesterday; as it has been pondered for years, and has only been confirmed by the observation of a life neither short nor passed in ignorance of public affairs; as, in fine, my object is truth, and my sentiments sincere, I will not shrink from the task.

SECTION I.

THE RIGHT OF RESISTANCE.

WITH regard to this first question, we must agree with Sir James, that it is what he has called it, “a *tremendous problem*, which, though it requires the calmest exercise of reason to solve, the circumstances which bring it forward commonly call forth *mightier* agents, which disturb and overpower the action of the understanding.”

It should seem, then, that in the outset, he announces at least very serious difficulty, if not despair, of ever bringing it to a satisfactory conclusion even in theory, much more in practice.

He allows that “in conjunctures so awful, men *feel* more than they *reason* ;” that the duty of *legal* obedience seems to forbid that appeal to arms, which the necessity of preserving *law* and liberty *allows*, or rather *demand*s. In such a conflict, therefore, he says, “*there is little quiet left for moral deliberation.*”

Little, indeed; so little, I should say, that it had been better, perhaps, to have left the subject un-

touched, as one upon which the attempt were vain to prescribe *beforehand* rules of moral conduct, in cases which must *necessarily* be exceptions to all rules.

To your penetration and logical mind I need not point out the difficulty, I might say impossibility, of reconciling the *law* of obedience to the duty of taking arms for the preservation of *law*.

This is a confusion of terms which I own it is beyond me to unravel, though I am very willing to suppose what is meant, that there is a *confliction* of duties — on one side, the duty of obeying the laws of the land, whatever they may be; on the other, that of obeying moral expediency, or the general precepts of reason and justice, should the laws of the land be not conformable to them.

Which of these is the superior, so as to extinguish the other, he leaves no doubt in the following passages.

“That there are some duties superior to others will be denied by no one; and that when a contest arises, the superior ought to prevail, is implied in the terms by which the duties are described. It can hardly be doubted that the highest obligation of a citizen is that of contributing to preserve the community, and that every other political duty, *even that of obedience to the magistrates*, is derived from, and must be subordinate to it.”

Of these simple truths there can be no doubt: but observe the use he makes of them. “It is a necessary consequence, (says he,) that no man who deems *self*-

defence lawful in his own case, can by any engagement bind himself not to defend his country against foreign or *domestic* enemies.”

The blending of foreign and domestic enemies is here skilfully introduced, because it should seem that it meant, generally, *enemies*, without particularising their characters; and the proposition would therefore pass without controversy. But we soon see what his true meaning (thus adroitly disguised) is, and that by domestic enemies is designated a king. “For oaths,” he goes on to say, “to renounce the defence of our country, were considered as binding till the violent collisions of such pretended obligations with the *security of all rights and institutions*, awakened the national mind to a sense of their repugnance to the first principles of morality.”

Do we not here at once detect the sophister, adroit as he is? For myself I profess my profound ignorance; and I ask of your far greater stores of information, to point out to me any oath recorded in our history as binding men *to renounce the defence of their country*? The search for such an oath, I am convinced would be vain. But the search for the meaning and motives of the assertion will not cost us a moment. The fallacy is unworthy so great a dialectician as Sir James. By renouncing the defence of our country, is as plainly meant, as if the words were printed in capital letters, the oath which no honest man I trust would refuse, renouncing the lawfulness of arming against our sovereign simply, and *without any addition*.

of words that may denote him a tyrant. Without such addition, I own I look in vain to discover how such an oath can be a pretended obligation, in collision "with all our rights and institutions."

Yet it is thus he treats this oath. — "Maxims so *artificial and overstrained, which have no more root in nature* than they have warrant from reason, must always fail in a contest against the affections, sentiments, habits, and interests, which are the motives of human conduct, *leaving little more than compassionate indulgence to the small number who conscientiously cling to them.*"

So then! in the opinion of this great Whig light, and certainly highly cultivated man, an oath not to bear arms against your lawful Sovereign, that Sovereign, in the terms of the oath at least, not said to be stained by any act, or any design against his people, is an oath, to renounce the defence of your country, and springing from maxims *artificial and overstrained*, having no more root in nature than warrant from reason; and the small number of honest fools who conscientiously cling to this expression of their allegiance, are to be treated with *compassionate indulgence*.

Thanking Sir James for his compassion, let us ask where were his scruples when he took the oath of allegiance, as I dare say he often did, and swore he would be true and faithful to his Majesty.

If true and faithful, could he rise in insurrection against him? and if he swore to allegiance, could

there be any objection to swear that he would not take arms against him to whom it was due?

Had the oath indeed swore, in so many words, that a man would not defend himself *though illegally attacked by the government*, the justice of the inculcation, by the learned jurist and historian, would be admitted, without comment; but as the oath implies that the resistance foresworn is only against *lawful* commands, I am lost in wonder that any man, not an actual rebel, much more that a man so versed in the nature of laws, should have broached such opinions, which, but for the name of the author, would need no refutation.

But he rests his proposition upon the right of self-defence, which alone, he says, (and says properly,) is the justification of foreign war, and may, and will therefore justify taking arms in a war at home. To take arms against the king may therefore be in defence of your country, which by the oath you renounce.

But is that so? Or is the oath not to attack the king, the same as not to defend yourself if *illegally* attacked?

This I am yet to learn; but this I *have* learned, that these are thorny questions, which, admitting of no general solution, are most unnecessary, and can tend to no possible good, while they may practically do much harm.

A sovereign whom one law tells you not to oppose, and another law tells you not to obey, denotes, if not a contradiction, at least so difficult a problem, and such a collision of contrary forces, that it is very

wantonness to call for a discussion of them, unless driven to it by the necessity of the case; and in a time like the present, when there is any thing but an attempt *on the sovereign's part*, to overturn the laws, such discussion, it should seem, is futile and gratuitous, as well as dangerous to tranquillity.

Those, however, who wished to overturn the king, but who are unhappily deprived, by his moderation and respect for the laws, and the mildness and justice of his reign, of all power to demonstrate that misgovernment which Sir James holds a *legal* justification of rebellion, — *those* will gladly hail the discussion we have deprecated, and insist upon proving what they call the *people's* right to act as if they were perpetually in extreme cases; although as to oppression, it is evident, spite of bawling, there is no case at all.

The impossibility of ever laying down before-hand a general rule, for what, as I have observed, must always be beyond, and therefore an exception to all rule, is, I think, a stumbling-block at the threshold of the attempt, which even so excellent a sophister as Sir James, in his delightful vision of metaphysical liberty, cannot get over.

If he laid down boldly and fairly at once, (which I must do him the justice to say he pretty nearly does,) that although there may be rules and regulations for conduct which men may agree to pursue as long as it suits them, but that there are no such things as *laws* binding them beyond their pleasure, (especially if they are repugnant to what *they* choose to call reason,

of which reason they themselves are the sole judges, so that what may be reason to-day may be folly to-morrow,) if this were the fundamental proposition on which he founds his right of resistance, I should at least be under no difficulty to understand him.

The proposition would then be clear.

Why then not at once say the laws of a man's reason are always above the laws of the land, and therefore the latter may be disobeyed, resisted, and changed, (or at least an attempt may be made to change them,) at the will and pleasure of any individual whose reason tells him to do so?

This, in fact, is the gist and purpose of his whole doctrine, avowed or concealed. For, from all I have quoted, and still more from what is to come, it is evident that he means a great deal more than the mere *right of self-defence*, if attacked.

To that doctrine no Englishman would object; for then, reason, justice, and the law of nature, which self-defence is, would rise above the law of the land; and did our jurist go no farther, we should agree with him. But he here undertakes a task, in which no man can be successful, if he is not, to reduce cases which are obviously of *necessity* and unforeseen, and therefore, from the terms, can only be met by a departure from the law, to all the regularity of an enacted code. His Continuator, improving upon this, was for bringing James to "a full and fair trial,"

before the exalted justice and superior reason of the realm*, only he despaired of finding a sufficiency of it, as we shall hereafter see. I mention it here merely to show how easily this vague and loose dealing with the most important principles of high justice, and affecting the very heart and soul of civil society, may lead to the most dangerous absurdities. What is meant by the exalted justice and superior reason of the realm, it would not be easy to define, except that a trial, perhaps such as that of Charles the First was intended, probably leading to the same consequences.

Whether Sir James would have approved the extent to which his Continuator carries his principles, cannot perhaps be known. I should hope not.

Let us, however, consider farther the argument on which he builds his right of resistance.

Having, fairly and clearly, canvassed the right in nations to wage foreign war with one another, the nature of the injuries that justify, and the rules by which such war should be conducted, which he rests upon self-defence, he applies the same reasoning as governing civil war.†

"A government, (says he,) is entitled to obedience from the people, because, without obedience, it cannot perform the duty for which alone it exists—of protecting them from each other's injustice. But when a

* Hist. of Revolution, vol. ii. p. 280.

† Ibid. ch. x.

government is engaged in *systematically* oppressing a people, or in *destroying their securities against future oppression*, it commits the same species of wrong towards them which warrants an appeal to arms against a foreign enemy."

This is abstractedly true; and were there any known authority in the state, (which, from the nature of the thing, is impossible,) to decide when a sufficient case of systematic oppression has arisen, a *legal* cause of war might be given to the oppressed party.

But inasmuch as independent nations are bound by no municipal laws to one another, and parties in the same state are, the comparison does not hold.

France and England have no common laws, no duties to bind them to one another, except those of reason. They are to one another in a state of nature; they have sworn to no code by which each is bound, and from which they cannot be released while it exists.

If, therefore, there is injury on either side, there are no previous duties to prevent the appeal to the sword, the only one left, the *ratio ultima regum*.

Not so with a people and their governors.

They are bound together by the strongest reciprocal duties, *expressly laid down and expounded by the volume of the law*.

It is to this they are to look in all cases of dispute; and if they cannot agree, neither party has a right to claim to be its *sole* interpreter.

There may be mutual injuries, and mutual accu-

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There may be mutual injuries, and mutual accu-

sations, but the law remains the same, and can never authorise a departure from it at the will of either party, or declare *that a case has happened* where all its provisions are abrogated, and itself annihilated. It might *describe* the character of such a case; but who is to pronounce upon its actual existence?

Not the parties; if only because they are parties. If it say the King shall judge, that very judgment may form another and still greater case of oppression. If the people, their decision may only increase the factious conduct which may have been right or wrong, imputed to them. For want of this judge of the case, therefore, no constitution can ever contain a provision for its own dissolution; and this Sir James himself fully admits in some very able passages, introduced however in order, as kings must be constitutionally irresponsible to the legal, to make them responsible to the moral code. It is this moral code to which I object in the light in which Sir James represents it. For though it in reality mean nothing but moral obligation, and the responsibility therefore of the delinquent king is to his conscience, and his God, yet, as Sir James would manage it, it is endowed with a body, has a court, judges, the axe and executioner, to fulfil its behests.

One would suppose that if a king could not be tried by the law, he could be tried by nothing else. He might be shot as an enemy or wild beast in the act of invasion; but he could not be *tried*. Sir James, then, must explain what he means by being

morally and *rationaly responsible*.* If it be to run the risk of being opposed, dethroned, killed in battle, or even murdered, as some kings have been, we agree, where the tyranny warrants self-defence, in going so far; but this is not *responsibility*, which means answering for some crime *before a tribunal or judge, having power to hear and determine*.

This is not salved by the fallacy of treating the governors and the governed as different nations, perfectly independent of one another, even after the parties are bound together under a social compact, from which, as soon as they enter, the *law of that compact* forbids them from ever separating.

The instance which approaches nearest to it is a clause in the Bill of Rights, which declares the subjects absolved from their allegiance, and that the crown shall pass to the next heir, if the possessor of it *shall hold communion* with the church of Rome, or *marry a Papist*.

This seems a distinct description; yet what is *communion* with the church of Rome†? and who is the proper judge, and what the jurisdiction that is to take cognisance of and decide when the case has happened?

If this be not pointed out, the clause is nugatory, though it may give rise to bitter commotions.

* Vind. Gall.

† A party in England might hold that to be communion, which the church of Rome might scornfully reject.

Suppose the king do not disclose or confess his communion with the church of Rome! Or suppose he marry a *concealed* Papist, whom he may have thought a Protestant when he married her, *or who may have changed her religion after marriage!*

Would that forfeit the crown? or if it would, can *any body that pleases* say the case has happened, and may every subject feel absolved from his allegiance and take arms to enforce the Bill of Rights, without a solemn adjudication *somewhere* of the fact?

Even if that *somewhere* is held to be the parliament, may that not admit of discussion, and opposition from the king, and even from other corporations? Might not the Lord Mayor and common hall say it was for the people to decide, and that they were the people as they have often said before.

But be it that the parliament have, or assume to have, the jurisdiction, (for it is not pointed out by the Act,) must there not be a trial of the fact? Must there not be *two trials*, one in the Lords, and one in the Commons?

And may they not pronounce differently? At any rate, must not the king be allowed to defend himself? May he not be wrongfully accused? Or if acquitted, may he not be accused again and again, and thus the whole government for ever be interrupted, till all end in that very civil war, which by this attempt to legislate on a positive case of resistance it was intended to prevent?

Yet Hallam, not perhaps having all these conse-

quences before him, thinks this vague and unguarded provision in the Bill of Rights "as near an approach to a generalisation of the principle of resistance, as could be admitted with any security for public order." *

What the security is, we see.

Observe then the impossibility of any constitution, laying down beforehand a case for its own abolition.

But if it contain contradictory provisions; if it enact that a sovereign is inviolable, and has a right to allegiance, yet may be tried and judged by his people, who may absolve themselves from allegiance *whenever their reason tells them to do so*, that is, whenever they please, all disquisition is useless, for all is absurdity.

The sovereign whom his subjects are ordered to obey, is surely himself a subject—his subjects' sovereign.

Thus much then for the comparison of the causes for war between foreign independent states, and between a sovereign and his subjects.

We say they cannot be compared.

Take, however, the following propositions:—

"A magistrate who degenerates into a systematic oppressor shuts the gates of justice on the people, and *thereby restores* them to *their original right of defending themselves by force.*"

The first part of this sentence is true. What is to be understood by the second?

What is the original right of the people to defend

* *Constitutional Hist.* vol. II. p. 500.

themselves by force? Where, *in society*, did they ever possess this right? No where. Then if they had it, (and this is what is meant,) it must have been *before society existed*, and they cannot have it again without society being completely dissolved.

It follows, then, that before oppression can be resisted, all ties of union, all the laws, institutions, and public and private rights and duties, must be broken up.*

See what it is to be a theorist, and to endeavour to give the form and regularity of a code of law, (whether municipal or natural,) to what must be above all form or regularity. Oppression must, as we have said, be resisted by force, and the case disposed of one way or other.

But we are not on that account to fly to metaphysical or extreme rights, and by only founding them on the savage state, to return to that state.

How many young people (myself once among them), have been dazzled with the seductive maxim "Salus populi suprema lex est!" When I read my Oratio pro Milone, how did I not glow with the incontrovertible sentiment on self-defence, "Est enim hæc judices, non scripta sed nata lex; quam non didicimus sed accepimus; etiam ex naturæ penitus hausimus, arripuimus; ad quam non pacti, sed facti; non instituti sed imbuti sumus; ut si vita nostra in tela, in latrones, in enses insideret, omnis honesta ratio erit expediendi salutis."

Nothing in the world can gainsay this, in our

* See this discussed more at large in the review of Locke, Appendix, No. V.

closets, in the recesses of our minds, in investigating the laws of nature. And what, says inexperienced youth, is to prevent the insertion of whatever these teach, in the codes of municipal or constitutional law?

Age and experience tell you at once, the want of an *impartial* judge, which cannot be yourself, who assume to yourself to pronounce *what* is the *salus populi*, what the *honesta ratio expediendi salutis*. Wait therefore till the case arises, and act upon your own responsibility, but also at your own risk: attempt not to legislate, that is, provide for cases which are to govern all, though, about them, all may disagree.

To Sir James's second proposition, as follows, we agree.

"As he (the magistrate) withholds the protection of the law from them (the people), he forfeits his moral claim to enforce their obedience by the authority of law."*

Now heaven forefend that we should question this as a *general* axiom in political philosophy. But, again, I say it is an axiom for the closet; to be kept in the mind, and preserved in quiet, till the occasion blazes out which absolutely requires it to be acted upon:

"Condo et compono quæ mox depromere possim."

Like Honour,

"It aids and strengthens virtue where it meets her,"

but "ought not to be sported with."

* Mackintosh's History of the Revolution of 1688, vol. ii. p. 51.

Never can it be laid down as a right, and as a duty, to be perpetually borne in mind, and constantly asserted, by every one who may think himself aggrieved — in fact *la sainte insurrection* of the French revolutionary madmen.

The total impossibility of laying down beforehand, especially in a code even of natural law, what is the *systematic* oppression, (for you see that even our friend holds that it must be systematic,) which is legally to authorise this resistance, ought to make us abstain from the attempt.

Not less is it difficult, if not impossible, in a mixed government like ours, where the sovereignty is in three estates, to designate who is to pronounce that systematic oppression has occurred, so as that the Constitution is annihilated.

It cannot be the Lords, for they are but one in three.

It cannot be the Commons, nor the King, for the same reason. It cannot be any two of them. It may certainly be in the three, but, as it is the oppression of one that is complained of, he will hardly join in authorising a revolt against himself.

Who then is to judge even under the *moral* law, is a question ever arising, never to be answered: or we must come to Paley's untenable answer, "Every one for himself," which is to authorise perpetual confusion and the right of the strongest.

In no *definite case*, therefore, can resistance be authorised beforehand. The Continuator of Sir James,

however, broaches, or rather hints, some wild notions of a power in the Lords, and therefore, *under the Constitution*, of trying James at the time of the Revolution.

Where he found this power, he does not, indeed, even pretend to say.

He is certainly prudent enough (whatever may be inferred,) not to rest it in terms upon the infamous mockery practised upon Charles I. But hear his words, and the occasion of them.

"Upon the entry of the Prince of Orange with an armed force into London, whence James at his command had retired, he was met by all the peers then in town, who attended him at St. James's on the 21st of December, where he told them he had sent for them to ask their advice how best to accomplish the ends of his declaration for a free parliament, and the other purposes of his landing.

"Upon this, after making some arrangements of form, and appointing officers, they agreed to assemble the next day in their accustomed House, as if parliament were sitting."

Did this, their *assembling in their accustomed Houses*, make them the lawful House of Peers even without reference to the power thus assigned them by Sir James's Continuator of trying their king?

I think not: the utmost that this author himself at first says of it is, that removing from St. James's *gave an air* of independence, and meeting in their own

house *an air* of authority to their declarations.* Thus, in the opinion of this author, they had only an *air* of legitimate power, not the reality of it.

It seems, however, they were content with this air; for, on assembling, they addressed the Prince in their capacity as the House of Peers, to take upon him the government, which he would not do without the concurrence of the Commons; and this could not be had, because there were no commons to give it.

To the discussion of this whole affair, which gave being to the Convention Parliament, we shall hereafter come.

At present, my business is with the strange, and surely indefensible doctrine, that the Lords, even had they been legally assembled in parliament, much less as a mere set of individuals, as they then were, could have brought James to trial. This, however, is broadly implied from the dicta of the Continuator of Sir James.

The king, when he was forced to leave the kingdom, left, as is known, a paper or letter stating his reasons.

This letter was laid before the Lords (such as they were), who determined that it should not be opened, and proceeded to the business of settling the nation.

In this, says the jurist, "the Lords appear to have exercised a sound discretion."

* Continuation of Mackintosh's History of the Revolution of 1688, vol. ii. p. 239, Paris edit.

"His (James's) removal once resolved*, there were two modes of proceeding to effect it: either a FAIR and FULL TRIAL, or a SENTENCE against him upon the NOTORIETY of his acts.

"It is a dangerous precedent," says the Continuator, "to condemn even a tyrant unheard; but for the former mode (pray observe this), *there was not enough of exalted justice or superior reason* in the realm, and the latter process alone remaining, the king's letter could only produce barren or mischievous commiseration."†

I own I was thunderstruck when I read these words, and thought I was reading an ebullition of Robespierre previous to the murder of Louis.

Yet even Robespierre seems to have been here a better jurist; for he laughed at the bunglers, his brother-murderers, who wished (what he knew was impossible) to give an air of *judicial* authority to the death they had resolved, and more consistently said there could be no trial where all was a "*coup d'état*."

Upon this Mignet, the historian of the Revolution, sensibly observes he was right, and gives a lesson to men who adopt these principles, which may deter them from the wild enterprise to bring a case of necessity under a regular code, be that code legal or moral. "*Les plus grands torts des partis*," says Mignet,

* Query, by whom? when? where?

† Continuation of Mackintosh's History of the Revolution of 1688, vol. ii. p. 280.

“après celui d'être injustes, est celui de ne pas vouloir le paroître. Le parti de Robespierre se montra beaucoup plus conséquent en ne faisant valoir que la raison d'état, et en repoussant *les formes* comme mensongères.” *

The preacher, therefore, of the doctrine relative to the trial of James, is greatly behind Robespierre in not fairly putting the case upon its true grounds, and in endeavouring to give it the character of a *judicial* proceeding, he equals him in his zeal for a *coup d'état*.

The “*Vindiciæ Gallicæ*,” however, that warm and eloquent apology for the atrocious departures from justice which blasted and disfigured the French revolution, would have better defended the sacred rights of the people, to rise in what he calls “*VIRTUOUS INSURRECTION AND NOBLE DISOBEDIENCE*.”†

Upon these positions, and this apology for the Lords for not bringing their king to trial, much is to be observed.

For when we talk of *trial*, the very word (I suppose it will not be contested) implies a number of important associations, familiar in England to the meanest mind.

* Mignet, vol. i. p. 316, 317.

† “The garrisons of the cities of Rennes, Bordeaux, Lyons, and Grenoble refused, almost at the same moment, to resist the *virtuous insurrection* of their fellow-citizens. Nothing but sympathy with the national spirit could have produced their *noble disobedience*.—*Vind. Gall.*

Laws: *competent authority*, *legal* power to inquire, rules of evidence, *legal* power to punish, preceding decisions, *legal* judges, *legal* juries, and, above all, the *legal* maxim that accusers shall not be judges.

Yet not one of these, in the pure and sacred fury of this successor of Sir James in Whiggism, ever seems to have come across him. Though a lawyer, a man of research, and evidently habituated to the investigation of all the bearings of judicial maxims, the extent and the consequences of departing from old, or of establishing new, precedents.

He talks of *bringing a king to trial by his subjects* (who, the law says, can never be tried, and whom all received notions have ever treated as inviolate), as if it was a matter of every day's occurrence, and a court was always open for the prosecution of monarchs.

“There were but two modes of proceeding,” he says,—“either a *fair* and *full trial*, or a *sentence* upon the *notoriety* of his *acts*.”

A most compendious way, it must be owned, of disposing of what he calls “this tremendous problem.” *

I need not say that “*sentence*” without trial is the grossest tyranny; this even James himself never attempted. It therefore implies trial, or, at least, inquiry. But what trial? What inquiry? Why, into

* Continuation of Mackintosh's History of the Revolution of 1688, vol. ii. chap. 10.

the *notoriety* of acts, not acts themselves; and who is to judge? the accusers.

Who are the witnesses? the accusers. Who the accusers? any body! man, woman, or child.

What the evidence? hearsay, report, common fame!

Can such a farce stand for a moment in the justification of a *sentence* that must at least be judicial?

Do we not here, on the contrary, see the dark-minded, mischief-brooding, intolerant Whig bigot, St. John, who, pressing by illegal means, even unto death, upon Strafford, the object of his fear and of his hate, did not blush to say that he had no right to plead law, because he had broken law, and that although we gave law to hares and deer, for they were beasts of chase, it was neither unfair nor cruel to destroy wolves and foxes, for they were beasts of prey. He therefore thought that Strafford was to be hunted down in a different manner from lesser criminals.

An excellent illustration of Robespierre's *coup d'état*, and of the purity and superior virtue of popular justice! According to this dogma, worthy of Jeffries or Nero, the breach of the law is assumed as proved: and no man, however unjustly accused, could ever have a trial. Yet this bloody man, a prototype of Danton and the rest of the French patriots, was made Chief Justice, and is worshipped as a deity of liberty by those who think we have still to go in quest of it. He did to Strafford, what Jeffries did to Sidney.

Those statesmen who think themselves free from all laws, but of policy, may adopt the coup of Robespierre; but if they pretend to the character of jurists, let them explain, if they can, what is meant by a *sentence, founded on a notoriety of acts*, and particularly what the sentence on James might or might not have been.

No limit to it is at least stated by Sir James's Continuator; and it might therefore have been, not merely dethronement or banishment, but imprisonment, or death itself.

But the laws of reason and morality are paramount to the laws of the land; and however low in the scale may be their interpreters, yet, with the gibbet, and the cry of à la lanterne to support them, they must be obeyed.

Of a truth we have profited much by the march of reason.*

As to *notoriety of acts* being a ground for a judgment on James, it was only one of the French maxims of justice, and as such had quite sufficient to warrant it. It, indeed, governed higher, or at least more regular, tribunals than the mob. I remember, in the French Revolution, a Monsieur du Patye brought before a court erected in the south. The jury (for there actually was a jury) said, neither the court nor the prisoner need trouble themselves, for it was known he was guilty, and he was accordingly,

* Was not Lord Stowell right in asking, so *quaintly*, whether the march of reason was the rogue's march?

by a sentence founded on a notoriety of his acts, transferred at once to the guillotine.

Nor was this more than was done by those who, in their zeal for liberty, would have destroyed every vestige of it,—I mean the parliament of 1633, who voted that common fame was ground for impeaching the Duke of Buckingham of high treason.

The reason for not adopting the other alternative, namely, bringing James to a “full and fair trial,” was, we see, the want of “*enough of exalted justice, and superior reason, in the realm.*”

That is, of course, (or it means nothing,) exalted justice and reason to form and go through such an exalted and reasonable undertaking, as to try James and decapitate him as they had done his father.

Unhappy England! to have so soon lost “the breed of noble bloods” that once adorned and elevated your character.

Not one Bradshaw, Cromwell, or Ireton left, to form a high commission court to manufacture and execute an *ex post facto* law, and destroy a life which all law forbade to be attempted.*

But leave we these revolting doctrines, which can

* It may not be irrelevant, in winding up this part of the subject, to mention a conversation between a warm-minded young senator and the cool-judging venerable Lord Eldon, on the disposal of Buonaparte, when he was brought prisoner to Plymouth. “Might he not be tried and executed as a murderer and treaty-breaker, under the law of nations,” asked the younger politician. “I should have no objection,” replied Lord Eldon, “to sit upon his trial, and even pass sentence, if you will draw the indictment.” The young senator was mute.

do no good; and whose only effect can be to inflame more violently brains already too much heated.

I am glad, therefore, to turn to something like redeeming qualifications of the right of resistance, which Sir James has preached; and which, though only arising from *prudential* motives, and recanting no principle, however dangerous, are so wisely conceived, and so clearly expressed, that it cannot but do good to those who may be led away by his theories, to observe what mischiefs he himself allows they may engender in the practice.

Having given, as we have seen, though, I think, most incorrectly, the same right of war to a people against their governors which belongs to independent states against one another; and having observed, that in all wars, foreign and civil, there may be failures, he adds, “But the evils of failure are greater in civil than foreign war. A body of insurgents is exposed to ruin.”

The probabilities of success are more difficult to calculate in cases of internal contest, than in a war between states.

“An unsuccessful revolt strengthens the power, and sharpens the cruelty of the tyrannical ruler:” (ought he not to have added, — and also of the tyrannical tribune, or rebel?)

“It is almost peculiar to intestine war, that success may be as mischievous as defeat. The victorious leaders may be borne along by the current of events far beyond their destination; a government may be over-

thrown, which ought to have been repaired; and a new, perhaps a more formidable tyranny, may spring out of victory."

Pretty well this for the author of the "*Vindiciæ Gallicæ*," who upheld all the acts of that Assembly, which, in one night's madness, overthrew all the institutions of ages in an empire, so flourishing, that it was impossible for all of them to be worthless or unjust. How well these speculations were illustrated both by the actors in the rebellion of 1641, and the French Revolution, to you I need not remark. Let us, however, go on.

"A regular government may stop before its fall becomes precipitate, or check a career of conquest when it threatens destruction to itself. But the *feeble authority of the chiefs of insurgents is rarely able, in the one case, to maintain the courage, — in the other, to repress the impetuosity, of their voluntary adherents*. Finally, civil war brings the same, or worse evils (than foreign) into the heart of a country, and the bosom of families. It eradicates all habits of recourse to justice, and reverence for law*: its hostilities are not mitigated by the usages which soften wars between nations; it is carried on with "the ferocity of parties who apprehend destruction from one another; and it may leave behind it feuds still more deadly, which may render a country depraved and wretched through a long succession of ages. As it

* No wonder when the object of one or both sides is to destroy the law.

involves a wider waste of virtue and happiness than any other species of war, it can only be warranted by the *sternest and most dire necessity*."

Now, I ask again, Who is to judge of this stern and dire necessity? The answer is, Any man. Necessity, therefore, is the rebel's as well as the tyrant's plea.

"The chiefs of a justly disaffected party," he goes on to say, "are unjust to their fellows and their followers, as well as to all the rest of their countrymen, if they take up arms in a case *where the evils of submission are not more intolerable*, the possibility of *reparation* by pacific means more apparent, and the chances of obtaining it by arms greater than are necessary to justify the rulers of a nation towards their own subjects for undertaking a foreign war. A wanton rebellion *is one of the greatest of crimes*. The chiefs of an *ill-concerted* revolt, however provoked, *incur the most formidable responsibility to their followers and their country*." *

So far Sir James in this masterly picture of the horrors of civil war, enough, one would think, to have made him pause longer than he did in explaining or proving the *right* to commence it.

Of this in these passages he says nothing, and it is obvious that the hesitation he touches upon is that

* We shall see presently, on the enterprises of Argyle and Monmouth which Mr. Fox approved, how totally he must have disagreed with Mackintosh in these sensible observations.

Wild, therefore, as Mackintosh was, Mr. Fox appears wilder.

which proceeds from prudence alone, not from any consideration of legality, or any of the causes that may in his mind justify it. In this indeed he only follows Mr. Fox, who, in the vehemence of debate (I trust it was no more), declared openly that it was only a question of prudence whether or not the people should obey the laws. Both, according to my view, were wrong.

To be sure Sir James makes one admission, which is of importance, and which I own I did not expect in his zeal for the popular right. He does allow that in the exertion of this right, a government may be *overthrown* which ought only to have been repaired; and this solitary and feeble qualification of the right to rebel, is the only redeeming accompaniment to the doctrine we are examining. All the other dissuasions from plunging a nation into the miseries and dangers he so forcibly describes, are founded upon prudential fears alone.

A wanton rebellion is one of the greatest of crimes: the chiefs of an *inconsiderable* and *ill-concerted* revolt incur a formidable responsibility. Why? Not because rebellion is a crime *per se*; not because revolt when *they choose* to think it necessary, is not one of the *inalienable* rights of the people, but because the revolt is *inconsiderable* and *ill-concerted*. If extended and well managed so as to promise success, then all is fair, warrantable, and legitimate.

Hence he winds up in that generality of language which befits an oracle, but is the bane of a jurist,

and which his logic ought to have taught him was the parent of error *, that "an insurrection, rendered necessary by oppression, and warranted by a reasonable probability of a happy termination (again justification by success, or the right of the strongest,) *that such an insurrection is an act of public virtue, always environed with so much peril as to merit admiration.*" Thus, whenever in the judgment of any man a king's life ought to be attempted, though the assassin may fail and be hanged, he will always merit admiration, on account of his gallantry. In this sentiment Sir James is at least practically supported by the late attempts against the king of France, which, though they failed, call forth the admiration of some of our generous English patriots.

And are these the results of learning, of studious and cool reflection, of thought, and philosophical as well as historical research?

Are these the apothegms of an experienced lawyer, a senator, and a judge; or a wild youth, boiling over with momentary enthusiasm and present feelings, and totally regardless of sober principles?

What is oppression?

Still more, systematic oppression?

Will, or can any constitutional code, can even Sir James answer, so as to describe the exact case, *when*, to what degree, and by whom it is to be perpetrated, to justify revolt?

* In generalibus versatur error.

The what, may be difficult to lay down as a practical case; the who, still more so.

Is every act that may be irregular, or even illegal; is every thing that demagogues may choose to call misgovernment, (for that, we see, is one of the justifying causes in this profound casuistry,) — is even palpable error universally acknowledged, to be a signal, and an authority for rising and breaking up the social order? for successful rebellion does no less.

Then as to the personality of the oppressor, is that to be confined to the king? *May it not be in other irresponsible branches of the legislature*, the Lords, the Commons, the parliament without the king? The laws themselves though ever so regularly enacted?

Such things are, and, still more, have been; and if oppression, be that of which any one of the millions who constitute the people, are, and ought (if Mackintosh is right,) to be legal judges, when or how can any community be safe?

The sword, and the musket, the axe and the gibbet, will be in perpetual employ; we must again embattle our houses against robbers in the form of patriots! and the *guerre aux châteaux*, which desolated France, may devastate the peaceable fields of Britain.

If oppression, too, (explained by every man's own feeling) is to *legalize* revolt, may not the king himself be the oppressed party, and revolt against his people? Suppose the Commons arbitrarily refuse supplies in order to overturn the government, or repeal the union with Ireland or vote any other madness —

their power to do this would be *legal*; but would it not be *oppression*, and according to the doctrine, legalise civil war? May not a king be reduced to self-defence from moral causes as well as the people?

God knows there have been other quarters, besides the king, from which oppression the most bloody, scandalous, ferocious, and unjust that ever was heard of has emanated. Such an oppression has destroyed all fair security for the people's liberties, though perpetrated by the people's representatives.

For the truth of this, I need only refer to the period preceding our Revolution; embracing the history of the Long Parliament of Charles I., and the latter parliaments of Charles II.

Be not afraid; I am not going to discuss the great abstract question between prerogative and law. I am not about to examine who was *originally* right in the quarrel—Charles or his parliament: for I am free as Hampden or Pym could have wished me, had I then lived, to say that the early acts of Charles were unjustifiable and tyrannical; and though allowances might be made for the errors of his education, a yielding temper exposed to the influence of favourites and evil counsellors, and, above all, for the darkness of that unsettled time, when the Constitution was so ill understood from the long, long prevalency of precedent against law; yet this will never deliver him from the charge of an *exercise* (though he was not guilty of an *assumption*) of arbitrary power. This, though not peculiar to *him*, justifies all that was done

at first by the parliament; and what Falkland or Selden proposed or approved, no free man would, I think, disapprove.

But when that parliament was triumphant; when the king saw his errors; when all that was wrong, was righted; when all possible security for good rule was given; and every reasonable desire of the Commons was granted, consistent with the existence of the monarchy;—in short when men who began as patriots, ended as rebels, and showed that every concession made them not only more unreasonable, but traitorous, then did they show, in their turn, that the representatives of a people can be as selfish, grasping, and dishonest—as arbitrary, cruel, and oppressive—as implacable, bloody and insolent, as the worst monarch that the worst times ever saw.

The Commons in the Long Parliament, as we have seen, murdered Strafford and Laud.

These guardians of the Constitution, who complained of the wresting of the law, invented a law by their own authority, which broke down all security, by setting loose what was thought the palladium of liberty, the *definiteness* of the law of treason.

This was done when they made the new crime, of *an endeavour to subvert the fundamental laws*, on which the Statute of Treasons was totally silent; done still more when, in order to destroy Strafford, they invented, in the very spirit of legal murderers, a new species of proof, called *accumulative* evidence, by which many actions, either totally innocent, or cri-

minal in an inferior degree, were held, when united, to amount to treason.

In what did the confessed wresting of the law, in Sidney's case, exceed this infamy? and when in that case, or any other prosecuted by the crown, was it ever proposed to prosecute the counsel for a man accused of treason, as partaking of it himself?

This was reserved for an immaculate representative of the people, in the person of Strode.

Well might Hallam call this a monstrous proposal*, yet it was but of a piece with many others. Need I add the murder of the sovereign himself for treason which was never heard of in the law, and could not be committed? The scandalous injustice pursued by the committee of management, to hunt out evidence against Strafford, is also shocking to an Englishman's notions of law or fairness.

While the object of their rage was close prisoner in the Tower, with no means to collect evidence on his side (certainly not by compulsion), this committee of rancorous enemies had power to examine witnesses upon oath, compel the production of papers, and scrutinise the whole life of the earl. Does not the feeling revolt at this, as base, cowardly, and tyrannical, and what, if practised by a king against subject, would have set the Commons in a blaze? Practised by the Commons themselves, it was only a noble defence of liberty.

It is true, in common criminal cases, a grand jury

* Hallam's Constitutional Hist., vol. ii. p. 215.

examines upon oath, to say whether there is ground for a trial; but, that found, what should we say to a power given to the counsel for the prosecution, to examine witnesses upon oath *out of court*, and, by examination, tutor them?

So sacred, however, is the flame of democracy that it purifies the grossest breaches of decency and justice.

They seized a judge (Berkeley) whilst sitting on his very tribunal to make him answer, for what? — His opinion upon a point of law brought before him, in his judicial capacity; and though that point was ship-money, and he might be, and was, wrong in his judgment, where would our rights be, and where the use of writs of error, if this were legal power?

Their impeachment of Berkeley, as well as Lord Finch, for high treason, is allowed by Hallam himself to have been as little justifiable in point of law as that of Strafford.

But, as has been observed, the people can do no wrong, nor (unlike in this the inviolability regarding the king) their ministers either.

They then invented another new crime, called *delinquency*; which, from its very indefiniteness, was the height of tyranny. Under this, lieutenants of counties, who had only exercised the powers necessary for their offices, and warranted by precedent, were of a sudden voted to be criminals.

Without a pretence of authority, and evidently, therefore, becoming themselves guilty of delinquency,

they commissioned Harley, one of their body, to destroy all altars, images, and crucifixes.*

All Papists and Arminians were declared capital enemies to the commonwealth.

What here becomes of liberty of conscience, when to doubt that God had predestined people to damnation was made a political crime?

Petitioners in favour of monarchy, or the church, were sent for, and prosecuted as delinquents, and imprisoned.

What imprisonments of Charles were ever equal to this? and where would the nation be now, if this were the assumed power of the Commons?

Reflections on Pym were treated as breaches of privilege; and Holles had the impudence, in a speech to the Lords, to demand the names of those peers *who should vote against the sentiments of the Commons*.

There were tumults enough, but Pym said, in his place, that “the people must not be restrained in the expressions of their *just desires*.”

To be sure this was imitated by a minister of our own day; who, in defending a mob, who were said to have carried a tricolour flag, and who, also, no doubt, had *just desires*, asked, with amiable simplicity, “Who but must respect the expression of their opinion by *the people*?”

In those times, as now, there was an outcry against

* This was executed with such zeal by Harley, that he would not allow any where one piece of wood or stone to lie at right angles upon another.

the bishops, immortalised by Butler, in a well-known distich." *

On one occasion, in going to attend their duty in parliament, they were set upon by a mob, insulted, and prevented.

They complained to the House, that they had been menaced and assaulted, and could no longer with safety attend in their places; and, in the mean time, protested against all that should be done in their absence.

This was unwise; but was it illegal? Still more, was it treason?

But the Commons, who desired no better, immediately impeached them of *high treason* (according to their own audacious usurpation of a power to make a new law), for endeavouring to subvert the fundamental laws, and *invalidate the authority* of the legislature.

What is more wonderful, the Lords had the weakness, as well as injustice, to sequester them from parliament, and commit them to custody.

If this were law, what petition to parliament might not, with a very little ingenuity, be converted at pleasure into an attempt to invalidate the power of the legislature, and therefore into treason.

These, and many more instances of usurpation, and a design to change the Constitution, have been so well summed up, and with such fairness in, as I

* "The oyster wenches lock'd their fish up,
And trudg'd away to cry no bishop."

think I may call him, a determined enemy of Charles, (Mr. Hallam,) that I think I cannot do better than follow his words:—

"After every allowance," says he, "has been made, he must bring very heated passions to the records of those times, who does not perceive in the conduct of that body (the Parliament) a series of *glaring violations*, not only of positive and constitutional, but of those higher principles, which are paramount to all immediate policy. Witness the ordinance for disarming recusants passed by both Houses, in August, 1641, and that in November, authorising the Earl of Leicester to raise men for the defence of Ireland, without warrant under the Great Seal,—both manifest encroachments on the executive power; and the enormous extension of privilege, under which every person accused on the slightest testimony of *disparaging* their proceedings, or even of introducing new-fangled ceremonies in the church, a matter wholly out of their cognisance, *was dragged before them as a delinquent and lodged in their prison*."

"Witness the outrageous attempts to intimidate the minority of their own body in the commitment of Mr. Palmer, and afterwards of Sir Ralph Hopton to the Tower, for such language used in debate as would not have excited an observation in ordinary times; their continual encroachments on the rights and privileges of the Lords, as in their intimation that, if bills thought by them necessary for the public good should fall in the Upper House, they must join

with the minority of the Lords in representing the same to the King; or, in the impeachment of the Duke of Richmond for words, and those of the most trifling nature, spoken in the Upper House*; their despotic violation of the rights of the people, in imprisoning those who presented or prepared respectful petitions in behalf of the established Constitution, while they encouraged those of a tumultuous multitude at their bar in favour of innovation; their usurpation at once of the judicial and legislative powers in all that related to the church, particularly by their committee for scandalous ministers, under which denomination, adding reproach to injury, they subjected all who did not reach the standard of puritan perfection to contumely and vexation, and ultimately to expulsion from their lawful property.

“Witness the impeachment of the twelve bishops for treason, on account of their protestation against all that should be done in the House of Lords during their compelled absence through fear of the populace; a protest not, perhaps, entirely well expressed, but abundantly justifiable in its argument by the plainest of law.

“These great abuses of power, becoming daily more frequent, as they became less excusable, would make a sober man hesitate to support them in a civil war, wherein their success must not only consummate the destruction of the crown, the church, and the

* Richmond was their known enemy, but his impeachment was for merely saying, on a motion for adjournment, “Why should we not adjourn for six months?”

peerage, but expose all who had dissented from their proceedings, as it ultimately happened, to an oppression less severe, perhaps, *but far more sweeping* than that which *had rendered the Star-chamber odious.*”*

To these forcible observations of Hallam, writing expressly on the Constitution, let me add as forcible a one of Hume, particularly forcible when we recollect that they had extorted by wily professions from the weakness of the king, that they should not be dissolved but by their own consent:—“The whole sovereign power was in a manner transferred to the Commons, and the government, without any seeming violence or disorder, was changed in a moment from a monarchy almost absolute to a pure democracy.†

These instances of oppression and barefaced usurpation have been confined to the period previous to that when Charles, pushed beyond bearing by their insolence and pretensions, tyrannising alike over him and all the nation, drove him to take arms in his own defence, and the defence of the Constitution. I make this assertion, because after all that has been written, said, or felt about liberty, and the glorious struggles of these her virtuous champions, I hold that they sought to gratify their own ambition, quite as much (many of them more) as to obtain the ostensible object proposed, with which they gulled the nation: yet Lord John Russell, in his life of his respectable ancestor, (respectable and respected, with a thousand faults,) says that the king’s violence be-

* Hallam, ii. 256—259.

† Hume, vi. 375.

came the cause of a civil war, and his insincerity prevented any hope of a peace.* How either of these assertions is proved we shall presently see.

As to the violence, Lord John, from the instances given, might have done well to have settled first, which party was the worst. Who really caused the war, no dispassionate or unprejudiced man will, in these days I think, doubt.

Every grievance had been redressed; ship-money, and tonnage and poundage, without grant of parliament, made illegal; the oppressive forest laws, monopolies, and rights of purveyance, done away; martial law abolished, together with the jurisdiction of the privy council, and the authority of proclamations; the Star-chamber, the High Commission Court, the Courts of the Presidents of the North, and of Wales, those instruments of oppression, (not created by Charles, but his ancestors,) these were all suppressed; even the votes of the Bishops in parliament were abolished; and the famous Triennial Bill passed, by which if the king did not summon a parliament at the expiration of every three years, the Chancellor was ordered to issue the writs, and if he did not, the sheriffs might. Moreover, the parliament could not be dissolved for fifty days after their meeting; and as if this were not enough, another act passed, as has been observed, by which they could not be dissolved at all without their own consent. This at once,

* Life of Lord Russell, vol. i. p. 37, 38.

without a war, overturned the whole Constitution, in favour of the people. What then remained to be done? Was not their work complete? Or if there were still a few minor abuses, would they not, after these great conquests of liberty over the prerogative, so easily, and some of them so fatally, granted by the king, have been abolished for asking?

Hear what the candid Hallam (I repeat, no friend of Charles,) says upon this most important epoch of this most unhappy contest:—

“It is to be observed that by these salutary restrictions and some new retrenchments, of pernicious or absurd prerogative, the long parliament formed our Constitution *nearly as it now exists*. Laws of great importance were doubtless enacted in subsequent times, particularly at the Revolution, *but none of them perhaps were strictly necessary for the preservation of our civil and political privileges*. And it is rather from 1641 (*that is, before the war commenced*) than any other epoch, that we may date their full establishment.”*

Be it so. Then what occasion for the war? Did the king abrogate or break any one law that he had conceded? When he had yielded up his prerogative, (which he had previously rather misunderstood to be law because handed down from his predecessors, than strained it higher than they had done,) did he ever retract a single concession, or attempt to invade a

* Constitutional Hist., vol. ii. p. 203.

single right? * Let us speak out. The fault of the war was the insatiable private ambition of the now hypocritical patriots and lawless graspers, who, under the name of the people's advantage, as they afterwards amply proved, sought only their own.

Hence again the fair admission of Hallam.—

“From this survey of the good works of the long parliament, we must turn our eyes to the opposite picture of its *errors* and *offences*; faults, which, though the mischief they produced were chiefly temporary, have yet served to obliterate from the recollection of too many the permanent blessings we have inherited through its exertions.”

By Mr. Hallam's permission, the benefit they at first conferred can never, on the other hand, obliterate from our recollection the iniquitous price in blood, and civil war, the rupture of all ties of kindred and society, the universal desolation and misery, the lasting mutual hatred and animosity among all ranks, which this infamous personal ambition of theirs cost us; I except not the popular Hampden, who perished, as it is always said, for liberty in the field. He did no such thing. Liberty was completely restored. According to Mr. Hallam himself, our present Constitution had not only been founded, but completed; and so fearful were the conspirators that the troubles should subside, that they framed their famous *remonstrance*, on the king's return from Scotland, in 1641,

* There is no doubt he violated the petition of right; but the reader is to observe the above question relates to the year 1641, long after that petition.

on purpose to keep them alive. All, or nearly all, the abuses they complained of having been redressed, far from conciliating the king, or doing him common justice, they renewed the history of their grievances, and, as there was little or nothing new, they opened all the old wounds afresh.

With what view, again ask the constitutional historian, any thing but a defender of Charles. His own words are better than mine:—

“This (the remonstrance) being a recapitulation of all the grievances and misgovernment *that had existed since his accession*, which his acquiescence in so many measures of redress ought, according to the common courtesy due to sovereigns, to have cancelled, was hardly capable of answering any other purpose *than that of re-animating discontents almost appeased, and guarding the people against the confidence they were beginning to place in the king's sincerity. The promoters of it might also hope from Charles's proud and hasty temper, that he would reply in such a tone as would more exasperate the Commons.*” *

Can any thing be more full to my point that the leaders of the Commons, Hampden at their head, were factious demagogues, instead of patriots? The picture drawn proves them infamous plotters to prevent all rational liberty; and the insincerity of the king, supposing it proved, was nothing to theirs.

* Constitutional Hist., vol. ii. p. 229. In the same spirit, he observes, rumours of pretended conspiracies by the Catholics were rather unworthily encouraged by the *chiefs* of the Commons.

Hampden, therefore, drew the sword for himself and the rebellious, not the sound part of the people.

He fought not for liberty but power.* His best friends, therefore, can only defend him by saying, that he plunged (good moral man!) like a Jesuit, into the depths of evil and deceit, to produce what to his hot brain seemed good.

I fear this may alarm, if not draw upon me the vengeance of a noble friend of ours, your near relation, the writer of his life. Let him *confute* these allegations, and I will confess my error. I am *so far* like Brutus, that

“I shall be glad to learn from noble men.”

On the subject, however, before us, the candid author whom I have quoted cannot help saying:—“In reflecting on the events which so soon clouded a scene of glory, we ought to learn the dangers that attend all revolutionary crises, however justifiable or necessary; and that even when posterity may have cause to rejoice in the ultimate result, the *existing generation are seldom compensated for their present loss of tranquillity.*”

He observes, indeed, that their very enemies confess that the parliament that met in 1640 met with

* This picture of Mr. Hallam's of the factions, proves almost the extent of Clarendon's supposed calumny of Hampden, applying to him the character of Cinna—“He had a head to contrive, a tongue to persuade, and a hand to execute any mischief.”

almost unmingled zeal for the public good and *loyal attachment to the crown.*

I doubt this on the part of not a few: Cromwell, Hampden, Pym, Vane, Ireton, Strode, St. John, Martin, and a long *et cætera.*

These, had I been the king, I would have “trusted as I would adders fanged;” but let that pass.

Mr. Hallam adds that they were “not the demagogues or adventurers of transient popularity, but men well born and wealthy, than whom there could, perhaps, never be assembled 500 more adequate to redress the grievances, or *fix* the laws of a great nation.

I admit their fitness to redress grievances; I deny their qualifications to fix the laws of a great nation; or if the last be allowed, the greater was their guilt; for instead of fixing, they unfixed every constitutional law the nation possessed.

Their advocate, able as he is, fails in accounting satisfactorily for this.

“They were misled,” he says, “by the *excess* of two passions (no one allows any thing for the king's being misled), both just and natural in the circumstances wherein they found themselves—resentment and distrust; passions irresistible when they seize on the *zeal* and *credulity* of a popular assembly.”*

All this is philosophically true; but, as I need not observe, *accounts* for their treasons, not *justifies* them.

* Hallam, vol. ii. p. 204.

I repeat, then, more confidently from having submitted it to examination, my assertion that Charles drew the sword to defend—the parliament to destroy—the Constitution; and the more we pursue the acts of each from the point where we left them, the clearer will this appear.

The immediate cause of the war, that which produced the king's retirement from London, and the calling of the peers to the North, were, as you well know, the contest respecting the militia;—in other words, the power of the sword.

Beat out of every other hold of the monarchy, had the king surrendered this, he might as well have yielded himself in chains, have divested himself of his crown, and by solemn acts permitted the change of the monarchy into a republic.

Upon this there can be no contrariety of opinion, any more than that whatever doubts may have been started as to the king's power over the militia, as to that of the parliament there could be none.

The pretension, therefore, of that body, or rather of the Commons alone, was sheer, unqualified, *traitorous* usurpation.

Their want of right is so clear, that I know not a single passage in the history, nor any authority, except their own, that ever countenanced the proposition.

“This question,” says Blackstone *, “became the

* Vol. i. p. 412.

immediate cause of the rupture between the king and his parliament; the two houses not only denying this prerogative of the crown, the legality of which, perhaps, might be somewhat doubtful, but also seizing into their own hands the entire power of the militia, of the *illegality of which step there could never be any doubt at all.*”

Hallam, also, whom for his candour, as well as his research, though in many things I do not agree with him, I love to quote, is full to this point:—“If the power,” says he, “existed at all, it *manifestly resided in the king.* The notion that either or both Houses of Parliament, who possess no portion of executive authority, could take on themselves one of its most peculiar and important functions, *was so preposterous*, that we can *scarcely give credit to the sincerity* of any reasonable person who advanced it.” *

The aim, however, as he very properly adds, was not so much to remove uncertainties by a general provision, *as to place the command of the sword in the hands of those they could control.* †

And how was this to be done? Why, in the bill presented to the king they themselves nominated the *lords lieutenants of every county, who were to obey the orders of the two Houses and to be irremovable by the king for two years.*

They also sent orders to Goring ‡, governor of

* Constitutional Hist., vol. ii. p. 248.

† Ibid.

‡ This was palpable treason.

Portsmouth, to obey none but the parliament, and forced the weak king to displace his own officer, and appoint *theirs to the government of the Tower*.

They usurped the government of Hull, in which they collected magazines of arms and placed them under the care of their own man Hotham, who resisted soon after the legal authority of his king. He afterwards repented, for which they cut off his head—a lesson to all weak trimmers, but thrown away upon many too near us, I fear, in the present time.

All this, be it observed, was before they had, by the tumults they had encouraged, forced the king, for his own preservation, to retire from his capital, and therefore before he had been obliged to set up his standard, which was that of the Constitution, against their standard of revolt.

This, therefore, I think is fatal to that opinion of the “*unmingled zeal for the public good, and loyal attachment to the crown*,” which Hallam has attributed to the Commons of 1640.*

This is so clear that we anxiously look for some deciding and sufficient cause for this total dereliction of all loyalty and duty—this undeniable design to destroy this part of the Constitution, by depriving the king of his most valuable and most acknowledged privilege, and conferring it upon themselves.

And what was this cause? Mr. Fox gives, if not the best, at least the most honest answer:—“When a contest was to be foreseen, they could not, consistently

* See p. 57.

with *prudence*, leave the power of the sword altogether in the hands of the adverse party.”*

I think so too; and if *prudence*, how to obtain an end, is to determine the character of that end, and convert wickedness into virtue, the Commons were virtuous and right. It is obvious also that the same *prudence* would then make them equally virtuous and equally right, not merely in not leaving the sword in the hands of the king, but in usurping it themselves; but according to this, *prudence*, by turning crime into virtue, will justify any violence or breach of law. A robber, seeing the object he is about to attack, armed, shoots him from an ambush. Foreseeing a contest, “he could not, consistently with *prudence*,” leave him the power of defending himself, or annoying the assailant. But the accounts of all who advocate the cause of the parliamentary leaders affirm their *distrust* of the king’s sincerity in all the concessions he had made.

The irrefragable proofs of their own insincerity I have already given; but the discussion of this question would lead us too far, though by no means irrelevant, and would exceed the bounds I have prescribed to myself.

Some of them, however, ought to be touched upon.

They are chiefly founded upon two events, certainly of considerable consequence; but whether they amount even to a proof of insincerity on the part of

* Hist. of James II. p. 10.

Charles, much more whether it can justify the usurpation of the power of the sword, in my mind is no question.

These events were first the associations of some officers of the English army which had been opposed to the Scotch, to engage their men to march to London for the protection of both king and parliament against the perpetual tumults then going on.

Next, the memorable indiscretion of the king in going with his guards to the House of Commons to arrest in person the five members whom he had charged with treason.

That either of these were defensible in point of prudence, or perhaps in point of law, no one will pretend to say. That they amounted to a design of the king to undo all he had done in favour of liberty, much more to even a moral right to take from him the sword and transfer it to themselves, thereby destroying the Constitution, may be strenuously denied.

The attempt by the officers, though least remarkable, is the least defensible, of the two, though neither are defensible. The association formed was to engage the men in a petition to the king and parliament, representing the great concessions made by the crown, the insatiable designs by turbulent spirits to overturn the Constitution, and the tumults excited by these spirits, endangering the liberties of parliament; they therefore offered to come up and guard that assembly. "So shall the nation, they conclude with saying, be vindicated from preceding

innovations, and be secured from the future which are threatened."

This was the head and front of the offence.

Now, if a set of constables, or an association of gentlemen, or any description of persons not soldiers, had presented such a petition, the usurping Commons (agreeably to all we have been narrating) would certainly have sent them all to prison, or probably impeached them. But would they have been justified in this? would the petition have been illegal? and supposing the king had countenanced it, would that have been a proof of his insincerity *in all that he had done*? I should say, no.

Then what difference, *as to that question*, is made by the circumstance that the petition was to come from soldiers instead of civilians?

I do not justify the interference of soldiers in any matter of state, or the propriety of their giving an opinion on *any thing*. Arguments or recommendations at the point of the bayonet must ever be condemned. *Inter arma silent leges*. This association, therefore, was utterly unconstitutional, and cannot be too severely reprehended; and the approbation which the king gave to it, was only an additional proof to the many he had given of his rashness, weakness, total want of judgment, and entire ignorance of his true situation. But this is not the question which only concerns his sincerity.

That by thinking he could protect himself, he meant to make war upon the parliament, repeal the laws he

had passed, or retract any thing he had done, could, in my opinion, have only been held by those, who, for their own purposes, had already made war upon *him*. That it proved folly, indiscretion, and incapability of surmounting the cruel difficulties with which his abler opponents (some of them as wicked as able) had surrounded him, is most true. That it showed dishonesty of purpose, and intention to resume his power by the sword, is said, and by some may be believed, but not proved.

Mr. Hallam himself, while he calls it (mistakenly, I think,) a "*demonstration* of an intention to win back his authority at the sword's point," with his usual fairness allows that "it is equitable, on the other hand, to observe, that the Commons *had by no means greater reason to distrust the faith of Charles, than he had to anticipate fresh assaults from them* on the power he had inherited, on the form of religion which alone he thought lawful, on the counsellors who had served him most faithfully, and on the nearest of his domestic ties."*

A brave admission from an antagonist; and had Charles really attempted what is imputed to him, might have possibly justified it on the same principle of self-defence, which Sir James assigns as the full justification of a subject to take arms against his sovereign.

We come now to that other case of invasion, in appearance, far more overpowering at first sight, but

* Vol. ii. p. 250. This last was soon after verified by the impeachment of the queen. By what law, or for what crime, God knows.

I think a far less proof of insincerity, or design to make war, than that we have been examining.

In these days, that the king can enter either House of Parliament, with or without an armed force, to arrest any of its members, even convicted, much more only charged with treason, will not bear stating. It is as preposterous as Mr. Hallam holds the assumption of the power of the sword by the Commons.

To violate the hall of free debate by such a proceeding, would deprive its members of all power of debating. And, though much may be said of the difference of the times, the then unsettled state of the question between privilege and prerogative, and the entire novelty of the case, there can be no doubt whatever, that the conduct of Charles on the occasion was still more rash, foolish, and illegal, than when he so unwisely assented to the association of the officers.

But recollect, my comment (for it is any thing but a defence,) is not to defend its legality, but to question its being a proof of insincerity, or of a resolution to *make war* upon the parliament.

How was it a war? The attorney-general had been ordered to prosecute the five members for high treason.

I suppose it is possible for members of parliament to commit treason, and not illegal to be made to answer for it. On the contrary, it never was pretended,—no maxim of law, indeed, was ever more established, than that privilege of parliament did not extend to treason, felony, or breach of the peace.

Members are at this day sequestered from the House, for trial, when they are guilty of crimes, and yet their privileges are not invaded. Well, the House was called upon to deliver them up to the judicial power; but instead of sending the members, they sent a message. This was a delay of that justice which they exacted so rigorously from every body else: witness their seizing Judge Berkeley upon the bench itself, in the very act of trying a cause.*

What was the executive power, thus eluded, to do? As long as the accused remained among their colleagues, though they might have been guilty of a hundred murders, were they to be held safe, and defy the judicial power? Yes! say we in *these days*, when the nature and necessity for guarding privilege is better understood; and yes! say I; for it is safer for the freedom of the Constitution to run the risk (an impossible one it should seem) of the House securing a traitor from justice, (if it be so unwise, and have the power to do it,) than to give a right to the officers of the executive to enter their precincts at pleasure, and disturb them in the exercise of their functions.

But no House would *now* be so unwise, so unjust, as this was, to aid and conspire to elude the demand of the law against an accused member. They would, as they actually do, virtually comply; for if a member offend the law he is always amenable to it, the judicial power apprising the House of the proceeding.

* Hallam's is the best defence for the non-rendering the members—the want of regular process.

Thus far, then, there could have been no complaint against Charles, for ordering the five members to be prosecuted, and consequently arrested, had he, or any one in his name, not entered the chamber itself in the course of the process. His conduct in applying to the House first was the reverse of war; it was a decorous and praiseworthy consideration, which met with an ill return. Set, as it were, at defiance, by what he considered rebellion against his lawful authority, he resolved, with his usual rashness and impolicy, to overpower resistance in the bud, by what, at very best, was a gross irregularity.

This is granted to its fullest extent. It was a palpable and most violent invasion of privilege; but it was an invasion proceeding from mistake, from misunderstanding, not as intentional breach of the law. It was any thing but intentional war. The law itself was then obscure, or at least not so clear as it is now: even now there are many cases of privilege, which, from their being apparently opposed to justice, and liable to passionate discussion, are painful and difficult to deal with. What must it have been then, when the subject was so new, unprecedented, and unsettled!

Do I justify Charles? No! He was wrong, rash, hasty, ignorant; but he was not *insincere*, the only point I deal with. He planned no armed interference to do that by power, which he *thought he had a right to do by law*; he recanted nothing that he had admitted; he cancelled no promise; he attempted

no repeal of any thing he had conceded. Once set right, as to this ill-understood and unfortunate proceeding, it never would have been repeated. Had he meant war, or to put a force upon the parliament to *recover his authority*, his soldiers would have entered the House with him, as they did with Cromwell, who, perhaps, was the loudest in the outcry on this occasion. He would not have confined his measure to a legal process against five members whom he had accused of treason, but would have *purged* the whole House of his enemies, as the same Cromwell afterwards did through Colonel Pride.

I think this is decisive of the question of sincerity; and I repeat, these observations are not to defend the measure, either on the score of legality or prudence, but to repudiate the stale and wily position which was founded upon it by far greater hypocrites and tyrants than Charles, that as he had appealed to the sword, they had a right to take it from him.

Be it so. But will that confer upon them the right to give it to themselves? This is the nipping point. Grant that he had no power over the militia. They had already reduced it, by annihilating the power at least of the lords-lieutenants. Their fears were therefore groundless. But they sedulously and cunningly kept them up, in order to seize the command of the military themselves, the only thing wanting to crush the king, and render their own power omnipotent.

Grant then all that is desired as to the intention

to make war; load Charles with all the reproaches that were vented upon him, and convert calumny into truth;—we will allow that the most accomplished gentleman, and the best husband, father, and master in England, was the most execrable of tyrants; will that do more than justify taking arms against him (taking his life in battle if you will)? Will it justify you in the total overthrow of the whole Constitution, and the arrogation of all power to yourselves? Suppose he had fallen in battle, would you not have been delivered from his tyranny, which you allow was only personal? Had his son no rights? Were not the laws safe? But no! that would not have suited your own ravin. You must yourselves be tyrants over the people whom you pretended to secure from tyranny.*

For observe the state to which things had been reduced. By voting every thing that could be done in public or private, within the scope of their privileges, *of which they were the sole judges*, in the very spirit of the corrupt and lawless tribunes of Rome, they, the Commons, had usurped a power to interfere in every function of government, and every private proceeding of life. By the weakness of the king, whom they so hypocritically pretended to fear, they

* This word *secure*, we shall presently see, is of momentous consequence in Sir. James's code of the law of resistance. He says you have a right to take *security* from your kings for good government. I suppose those modest exactions of Hampden, Pym, and the rest of the virtuous patriots, are the sort of securities meant.

had become independent for ever, whether of him or any other power in the state. Thus they were completely tyrants in power as well as disposition; and that their tyranny might be above all chance of resistance, they now claimed the power of the sword, and drove the king to war rather than renounce it.

This was so palpably nefarious, that Hallam, who throughout inclines to their cause, allows that no man has a right, even for his own security, to subvert his country's laws, or plunge her into civil war. But this admission draws from him the somewhat extravagant opinion, that Hampden, Hollis, and Pym, might *not absurdly* consider the defence of English freedom bound up in their own, assailed as they were for its sake, and by its enemies.*

That these *innocent* persons might consider English freedom bound up in their own, is very likely; that they could so consider it *without absurdity* (if by that phrase we mean reasonably) I do not admit, any more than that having been charged with high treason, of which it is more than probable they were guilty, is a proof that they were assailed, because friends to liberty, by its enemies. The excuse, then, with submission to their apologist, absolutely fails.

Away then with all notion that this was a war in defence of the people's rights! It was a war in defence of the leader's wrongs, and all the blood that was afterwards spilt was upon their heads.

* Vol. ii. p. 239.

From these considerations, the defence they set up for their conduct, grounded upon their *fears*, becomes absolutely ludicrous. Well might the king say, "You speak of jealousies and fears! Lay your hands on your hearts, and ask yourselves whether I may not likewise be disturbed with fears and jealousies."

They had desired him not to quit London, where, like the scoundrels of the French Revolution, they knew they could rule him by their mobs. His answer was: —

"For my residence near you, I wish it might be safe and honourable, and that I had no cause to absent myself from Whitehall. Ask yourselves whether I have not.

"What would you have? Have I violated your laws? Have I denied to pass any bill, for the care and security of my subjects? I do not ask what you have done for *me*." *

The whole defence of the king, at this period of the history, as the whole guilt of the usurping hypocrites, and the wretched fanatics who gave them their power in London, may be summed up in these affecting sentences, as cogent from the implied argument they contain, as pathetic in the language used.

Were I to stop here (and I indeed fear you will think it is time), I imagine enough has been said to

* Rushworth apud Hume.

place the events of this too interesting period, and the real character both of them and the actors, on the right footing. That there were some real patriots among them, well intending, but misguided men, I should be loth to deny. That the most of them were at best pernicious, and many of them wicked and bloody enthusiasts — that the leaders were urged on by a criminal and infamous ambition, when they had forgotten the ardour for liberty which had originally kindled them, was my opinion from the moment I could read or think. It is so now; and has been only confirmed in my old age by all that I have since read or thought, and all that I now see.

Still there may be something wanting to complete the story of their villanies, and prove that the representatives of the English people may be as corrupt, unjust, and oppressive tyrants as any monarch whom it was their glory to oppose.

Let us then pursue the history of these patriotic Commons, after the king had escaped from their fangs and summoned his peers and other friends to attend him at York. Let us begin with the nineteen propositions which were sent to him as the terms of what, of course, they thought *equitable* conditions of peace.

They amounted to what has justly been called a total abolition of the monarchy, and afford a pregnant illustration of the correctness of the too hasty opinion of the excellent writer I have so often quoted, that this parliament had met with almost *unmingled*

zeal for the public good, and loyal attachment to the crown.

With the propositions you are familiar. To refresh the memory of others, I presume to state them.

“No man to be a privy counsellor, not agreeable to parliament.

“No deed of the king to be valid, unless it had passed the council, and was attested under their hand.

“All officers of state, and principal judges to be chosen with consent of parliament, *and for life.*

“None of the royal family to marry *without consent of parliament*, or the council.

“Laws to be executed against the Catholics.

“Votes of popish lords to be excluded.

“The Liturgy and church government to have place *according to the advice of parliament.*

“The ordinance in regard to the militia, to be submitted to.*

“That the justice of parliament pass upon all delinquents.†

“General pardon to be granted, with such exceptions as should be made by parliament.‡

* That is, the power of it to be given to the parliament.

† Admirable attention to the rights of Englishmen. The justice of *parliament* not of the known law. Who were delinquents, was in their own breasts. If ever there was despotism, even of Nero, it was here.

‡ Whether any of their own side would come under these exceptions, we may guess; and as they had assumed the province of deciding who were delinquents, who were always friends of the king, we may know where the weight would fall.

"That the forts and castles be disposed of by consent of parliament.

"That *no peer be made but with consent of both houses.*"

Such were these famous propositions; such the honest designs of the *restorers* of our constitution, and, be it remembered, *before* the war had actually begun. It is, therefore, a still more damning proof than any yet cited, of their original intentions.

These propositions need only to be stated to give the true character of the rebellion that followed — for rebellion it was, shameless and wicked, if ever there was one. It will also show satisfactorily (or nothing will show any thing), that, granting the whole question as to the sincerity of the king, and their fears of his designs through military power, their own true design was to make themselves sovereigns, him their subject.

How was it necessary defence against an armed force, that they should appoint the privy counsellors? that the king should execute no deed that they did not ratify? that the appointment of all officers of state, and the creation of all peers, should be in *them*? that he should divest himself even of the power of a father, and his children be not allowed to marry without *their* consent?

These things are so clear that I am really lost in astonishment that any man of sane mind, on perusing these conditions, *after all that had been done*, should for one moment undergo the illusion that they were

dictated by any thing but the most scandalous ambition; and by destroying the sovereign, and removing all ancient landmarks, to arrogate all power to themselves.

The people!! What were they with these false men, but the mere tools of their designs? I have sometimes been wondered at for calling Hampden a traitor. Was he not so when he could concur, much more when he took too celebrated a lead, in this infamous conspiracy?

The astonishment is that any man, who had the character of honour, such as Essex, Northumberland*, or the Montagues, could have lent themselves to such palpable wrong!

As my point was to show that there may be to the full as much corruption and oppression on the side of

* This Northumberland might have been a man of honour, but seems throughout the war to have been a mere mass of pride, with little force of understanding; mighty ideas of his own consequence, and no reach of ability or foresight to support them.

Had he not been born the head of the Percys, he never would have been the head of any thing.

While all the kingdom was in a struggle for life and death, to be allowed to remain idle at Westminster, a mere man of quality, not discompose himself, but think all about him unmannerly knaves, seems to have been his only ambition. A sort of Mr. Delville in Cecilia, or a modern Exclusive. His pomp was a little taken down by Cromwell in the act of administering to it, by making him one of his lords, which taking as an affront, he never would sit with his vulgar colleagues, such as Colonel Pride the drayman.

He seems to have been of no real energy, and not at all worthy the good fortune that attended him.

a people, as of a king, this might suffice: but there are minor instances,—instances not unworthy of perusal in establishing the view I have taken.

The first I will mention was, perhaps, equal to the insolent iniquity of the demands I have been reviewing. What will the most furious of their apologists say to the following vote?

“That when the Lords and Commons in parliament, which is the supreme court of judicature, shall declare what the law of the land is, to have this not only questioned but contradicted, is a high breach of their privileges.”*

This was as admirably supported as the doctrine itself was constitutional; by turning critics in the sacred cause of the people, and finding in the coronation oath, that the king promises to maintain the laws, which the people *had chosen* (in Latin, *quos elegerit vulgus*). This *elegerit* they construed to mean which the people *shall choose*.† What had become of their holy zeal in support of the Constitution, when they attempted such a fraud to alter it? Was the claim of the dispensing power, for which James was dethroned, one particle more usurping than this?

When the war broke out, they impeached the Queen of high treason. For what act?

The bringing a supply of arms to the king, her

* Rushworth apud Hume, vol. vi. p. 288.

† Ibid.

husband and sovereign. Would not this have made every man who adhered to the king, nay the king himself, guilty? But it was an affront, a mean stab, which gratified spleen and low revenge: which we want not this instance to show, are perfectly compatible with the *purest and most exemplary patriotism*. It is well called by the historian of the Constitution, “a violation of the primary laws and moral sentiments that preserve human society, to which the Queen was acting in obedience.”*

The next proof of iniquity was, the agreement of nearly all the members, *in order to purchase the treasonable assistance of the Scots*, to take the Scotch covenant, which pledged them to overturn the Established Church.

This they did, and either reduced it to beggary, which was the case with half the clergy; or, what was worse, forced them into perjury, to save themselves from starvation.

Soon arose the murder of Laud.

He had been impeached, and lay in prison *four years* without trial: an admirable proof of their regard for liberty.

He was now seventy, and was at last proceeded against.

But the Judges, when consulted, declared there was no *legal* treason against him; for there was

* Hallam, vol. ii. p. 279.

clared to be law by the Commons, hath the force of law, without the consent of King or House of Peers. This was the sovereignty of the people with a vengeance, and, of course, no invasion of the Constitution!

In the Treaty of Uxbridge, though they had by no means yet conquered the king, who was surrounded by a rival parliament at Oxford, their exaction was as great, or greater, than in the nineteen propositions.

They claimed not only the militia, but to name all commanders by sea and land, including the lord lieutenants of Ireland, and all governors of garrisons for an *unlimited* time. What pretext had they for this but their own ambition? Hallam is excellently fair upon it, and allows that Charles had now been reduced to an impossibility of ever again pretending to arbitrary power.* Yet they required the king to attain and except from pardon forty of the most considerable of his English, and nineteen of his Scottish subjects, together with all popish recusants who had borne arms for him.

Forty-eight more, with all members of his parliament at Oxford, all lawyers, and divines who had embraced his party, were to be incapable of any office, *be forbidden the exercise of their profession*, or to come within the verge of the court, and were to forfeit a third of their estates.

The mind absolutely revolts at these infamous pro-

* Hallam's Constitutional Hist., vol. ii. p. 303.

posals, and at the delusions of mankind, which could incline any one then, but much more now, to suppose those who made them anything but rebels.

That they were patriots acting for the good of their country is mockery to all truth; and we heartily assent to the saying of Colonel White when Cromwell sent him to clear the house of Harrison and other saints, who told him "they were seeking the Lord," "Then go elsewhere, for, to my certain knowledge, he has not been here these many years."

One would suppose that those who could risk so much character, and incur so much detestation in the minds of moderate and good men, *for the sake of the people*, were at least free from any imputation of a love of filthy lucre for the sake of themselves: and, no doubt, our modern patriots who admire them, and those who are ambitious of treading in their steps, will be startled when they are told, that, having loaded the people, whose deliverers from illegal imposts they set out with being, with taxes far beyond those imposed by the most wasteful of monarchs*, they shared openly among themselves no less than 300,000*l*.

Will not the surprise increase when we estimate what this really was?

I am a bad computer of the real or relative value of money; but are we far wrong in supposing that the pound, two hundred years ago, could command four

* It is said, though probably an exaggeration, by Clement Walker, who, however, was a zealous parliamentary, that they amounted in five years to 40,000,000*l*.

times the amount in commodities that it can at present?

If so, let our patriots of the present day, who admire their brethren of these former times, say what they think of them for filching from their masters, the people, 1,200,000*l.* in the course of five years.

Pursue the same line of inquiry in the pensions (that never-dying source of complaint and indignation of the present time) which the parliament settled upon those they wanted to get rid of. To console Essex for dismissing him, they settled upon him 10,000*l.* (that is, of our money, 40,000*l.*) a year. Upon Richard Cromwell, 20,000*l.*, equal to 80,000*l.* a year.

Even the little job of appeasing a would-be military rival in Lambert, when he dismissed him from his command, cost Cromwell 8000*l.* a year.

What would our present economists and reformers, who feel such holy horror at the king's power to bestow a few hundreds upon a decayed or drooping family, or recompense a retired servant—much more, if done in sheer munificence towards the objects of it,—what would they think of their brother patriots if they purchased the active services, or the mere abstinence of individuals from action, at such a price?—much more, if these patriots bestowed such sums upon themselves?

This was mere robbery: what shall we say to their tyranny? Obvious and grinding in every thing, how did it not press down its objects, as if with *peine forte et dure*, as exercised by those savage oppressors the

major-generals. They wanted only the power of life and death, exercised by the French revolutionary commissioners, to be as cruel and grinding as they. They, at least, deprived their French imitators of all pretension to originality in the creation of a crime by no means unimportant, — that of being a *suspected person*. This subjected him to the tyranny of decimation, or the exaction of the tenth of his property imposed upon all royalists by that deliverer from oppression Cromwell, which, to collect with greater facility these memorable offices of the twelve major-generals, were instituted. These divided England into as many parts, and, without regard to compositions, capitulations, or *acts of indemnity*, reduced most of the royalists to ruin.

But with the royalists the oppression did not stop. Assisted by commissioners, they had power to subject whom they pleased to decimation; to levy all the taxes imposed by the Protector and his council; and to imprison any person who should be exposed to their jealousy or suspicion: nor was there any appeal from them but to the Protector himself and his council.

Under colour of these powers, which were sufficiently exorbitant, the major-generals exercised an authority still more arbitrary, and acted as if absolute masters of the property and person of every subject.

"All reasonable men," says Hume, now concluded, that the very mask of liberty was thrown aside, and that the nation was for ever subject to military and despotic government, exercised not in the legal

manner of European nations, but according to the maxims of Eastern tyranny. Not only the supreme magistrate owed his authority to illegal force and usurpation: he had parcelled out the people into so many subdivisions of slavery, and had delegated to his inferior ministers the same unlimited authority which he himself had so violently assumed.*

In conformity with this, Cromwell imposed, or collected, taxes unauthorised by law; and when one Cony had, like another Hampden, refused to pay, and, the tax being enforced, had sued the collector, Cromwell (not like another Charles) committed the counsel he employed, Maynard, Fivirden, and Wyndham, to the Tower. He also erected a high court of justice, with powers different from those known to the law, by which four legal murders were committed—those of Gerard, Vowel, Slingsby, and Hewit; “in short,” says Hallam (though the eager enemy of hereditary despotism), “no hereditary despot proud in the crimes of a hundred ancestors, could more have spurned at every limitation than this soldier of a commonwealth.”†

His management of his parliament is almost still more striking. He had exacted a recognition from the members not to propose any alteration in the government as settled in a single person and the parliament; and he placed guards on the House, who

* Hume, vol. vii. p. 245.

† Hallam's Constitutional Hist. vol. ii. p. 414.

turned away all members who had refused to sign this recognition. They complained to the speaker, who, requiring of the clerk the indentures of all the members, returned; and asking why the names of those who had not taken their places were not entered, was informed it was because they had not been approved by *the council*;—an admirable picture of a free representation of the people, purchased by a civil war.

The speaker then demanding of the council why they were not approved, received this most satisfactory answer, still more demonstrative of the liberty which had been acquired by the death of the king:—

“Whereas it is ordained by a clause in the instrument of government, that the persons who shall be elected to serve in parliament shall be such, and no other than such, as are persons of known integrity, fearing God, and of good conversation, the council, *in pursuance* of their duty, and *according to the trust reposed* in them, have examined the said returns, and have not refused to approve any who have appeared to them to be persons of integrity, fearing God, and of good conversation; and those who are not approved, his highness hath given order to some persons to take care that they do not come into the House.”*

Well, you see the council here stand upon a *trust* reposed in them by the instrument of government! and though no where expressed, they implied it as

* Journals, 22d September, ap. Hallam.

custodes morum; and we have here an excellent practical lesson to those theorists (I by no means except the great names of Locke or Mackintosh), who are so fond of introducing *implied* trusts in the construction of written laws. May we not say that there never was an example in history of greater cant and hypocrisy, with a view to a violation of right, than this passage exhibits, compared to which all the usurpations and instances of insincerity imputed to Charles sink into nothing?

I think we may here take our leave of this sad and desolating picture of fraud, violence, hypocrisy, and oppression, which the history of these patriots and lawful representatives of the *only true authority*, as they are called, the people, exhibits.

I have waded, and forced you to wade, through a hideous swamp of traitorous designs, actions, and characters, which by some zealots, some mistaken men, and some villains, have been thought to have adorned, but which, I trust, I have proved have disgraced our history. If I have, I have also proved my point, that the tyranny and oppression which justifies a war of his subjects against a king, may be equally exhibited by the subjects themselves, and equally, therefore, justify a war against them.

In short, it is not by that same vaunted name, the people, that we are to be cozened.

It will not excuse, though it may varnish, crime in the eyes of hot zealots or cool knaves.

Both their power and their disposition to rob,

murder, usurp, and oppress, are to the full as great, if not greater, than in a king. It is a talismanic word, which, like other talismans, may be broken, and leave vice, if it exists, in all its naked deformity.

How greatly could I add to this picture if I borrowed the colours disclosed by the French revolution; but as my object is England, to England I will adhere.

Turn we, therefore, to the later parliaments of Charles II., and, before everything, to the infamies of the popish plot, — that dreadful scourge, which created as much dismay, and violated as many principles of justice, morality, and law, with quite as much infatuation as any act of the dethroned James.

It even exceeded him in the cruelties of tyranny. He seized no property, though he invaded rights; he took no life, though he violated laws.

I mean not by this even to palliate the legal crimes of Jeffreys, or the military executions of Feversham: they were horrors, not even extenuated by the unjustifiable rebellion and invasion that raged at the time; but James was scarcely more answerable for them personally than William for the still greater horror of Glencoe.* Even Hallam, one of his most severe judges, observes that “the strength of the

* It is true Jeffreys accuses him of much of the blood, and James was unforgiving enough. But who believes in such an authority as Jeffreys; and as to William's abhorrence of blood, we shall presently see what Mackintosh thought of it. If Sir James's opinion is founded, that the supposed murderer of De Witt would not have scrupled destroying James, the Whig king and the Tory king are about equally matched.

Upon the trial, too, of this same violent nobleman, complaint was made that his jury had been named

Now the question is, who are the lawyers whose *professional* knowledge is thus to sink, in consequence of Lord John's opinion, before the unprofessional but intuitive knowledge of Mr. Fox? Lord Hale, Lord Holt (the last a Whig, both incorruptible), Sir Joseph Jekyll (another Whig, and proverbially honest), Mr. Justice Foster (one of the greatest authorities on the criminal law), Sir William Blackstone, Chief Justice Eyre, and Chief Justice Gibbs, who, when counsel for Hardy and Tooke, indicted for this very sort of treason, and laying then the foundation of his after great reputation, could not breathe a word against the law of Lord Russell's case, but, on the contrary, pronounced the highest eulogium both upon the legal knowledge and the integrity of Pemberton, who tried him. These are the lights, which, according to Lord John, are to be extinguished by the superior, though *lay* authority of Mr. Fox. Every one must venerate both the abilities and the integrity of character of Mr. Fox, and we ought so far to allow for the partiality and admiration of a young political Euryalus, when he hazarded this rash but generous compromise of his judgment in praise of his Nirus; but the recollection of Mr. Fox's failures, so fatal to himself and his party, on the subject of the Prince of Wales's claim to the regency, ought, one would think, to have made Lord John pause, before he denounced for comparative ignorance in their profession the brightest ornaments of that profession. However, this devotion of himself (for it is not less) to the cause of his friend, ought to spare farther criticism. It is sufficient that the spell with which, for party purposes, Lord Russell's supposed martyrdom has always been surrounded, is broken by those who have most pretension and most right to pronounce upon his case, and who *have* pronounced upon it. The idea that, because Lord R., when he planned insurrection, did not mean to take the king's life, he was not therefore answerable in law for the probable consequences, is a puerility we never should have expected; and if Lord John still persists in his opinion, we hope he will not be offended if we advise him to read

by the Tory sheriff, North; but when vengeance was called for upon North by the victorious revolutionists, they were stopped by finding that he had only pursued the precedent set him by the "notorious Whig sheriff, Bethel."

"Thus had the course of justice wheeled about."

But can we quit Lord Russell without noticing what has always seemed to me a stain upon his humanity, and only shows that tyrannical subjects are as furious in the use of power as tyrannical kings. I mean the doubt he expressed of the power of the crown to remit the horrors of cruelty which form part of the sentence upon treason, and confine it to the infliction of death alone. The resolution of the House upon this *supposed usurpation* of the king, is most observable. "This House is *content* that the sheriffs do execute William, late Lord Stafford, by severing his head from his body *only*."

carefully the reply of the solicitor-general on Hardy's trial, where legal responsibility for crimes not originally contemplated, but consequent to those that are, are irrefutably set forth. The surprising assertion, therefore, of Mr. Fox (however he may have himself believed it), that, "even according to the *most strained* construction of the statute of Edward III., Lord R. could not have been condemned," had long been ranked, and ranks still more than ever, with the constitutional and real judges of what is or is not law, among vulgar errors. If Mr. Fox was right and the judges wrong, why did he not, when a minister, why does not Lord John, now he is secretary of state, among other reforms, set this absurd and crooked law straight?

This House content! What had they to do with it, content or not content? The execution of the laws and the power of pardoning is in the king alone: but the House here set itself above the law, and hence, according to Mackintosh's doctrine (not his language), a right of war accrued to the king against them. We say nothing of their address to the crown, praying that it would give orders for the execution of Pickering and other condemned priests, — a request which, as, with the exception of Pickering, their fault was merely the exercise of their religion, Lord John Russell himself, in the life of his ancestor, denominates, with reason, savage and inhuman.* The heart again sickens at these usurpations and cruelties of the Commons.

But if this could belong to the character of so amiable a person in private life as Lord Russell; if such a person could be so infuriate a party bigot, — so outrageous a visionary, what could be expected from his brother whigs, in the wantonness of assumed power.

Probably the expelled tyrant James would be obliged to yield the palm of infatuated despotism, to these champions of the people, and enemies of oppression.

Look at the acts and votes of the Commons of 1680.

Their violence in the popish plot, and the general

* Life of Lord Russell, vol. i. p. 157.

violent spirit kindled by that iniquity, had produced, as we know, petitions full of inflammatory language.

To balance these, the friends of the government dealt largely in addresses in which they *abhorred* the sentiments of the petitioners; hence the two classes of petitioners and abhorers. The Commons, of course, abhorred the abhorers; and because one of their body, Withens, encouraged one of these addresses, they expelled him. Will any man alive say this was not a breach of one of the best of the natural and moral rights of man — the right to his opinion? Had it been perpetrated by a sovereign according to the principles of our doctors, it would have been a legitimate cause of revolt?

But Withens was one of themselves: see how it fared with strangers.

They had no jurisdiction over real offences; but they could turn what they pleased into imaginary ones, and punish them as breaches of privilege, without appeal.

A despotism far beyond the king's, even if he were not made constitutionally responsible in the persons of his ministers. They had no ministers, and, in so far, were superiors to kings. How did they use their power?

Thompson, a clergyman, preached a sermon in which he traduced Hampden, and Queen Elizabeth, both of them long in their graves. He might be a fool; he might be a madman; a courtier; a sycophant; but what law did he break? Nevertheless,

they voted this a breach of privilege, arrested, and brought him to their bar to answer for a high misdemeanor, and compelled him to find security to answer to an impeachment voted on these charges.*

Others were brought to the bar for *remissness* in searching for papists. Where did the law pronounce this a crime? It is scarcely exceeded by the crime invented by the French murderers — the suspicion of being suspected.

Sir Robert Cann was taken into custody for declaring there was no popish, but a presbyterian plot. This assumed dominion over opinion beats, or at least equals, Domitian or Nero.

A general panic spread over the country in consequence of these infamous invasions of liberty by its immaculate guardians; and even Lord John Russell is forced to allow the practice became so oppressive, that the people began to turn their *suspensions* of an arbitrary king into *fears* of an arbitrary parliament.† At length, a Mr. Stawell of Devonshire refused compliance with the Speaker's warrant, and defied their tyranny. Their factiousness was now at its height. They resolved *nem. con.* that no member should accept of any place under the crown, or any promise of one, under pain of expulsion.

Where did the constitution give them this power, by which they invaded deeply the rights and freedom

* Journals, December 24. 1680. cited by Hallam.

† Life of Lord Russell, vol. i. p. 211.

of choice of the constituents of such members who, therefore, at least according to the doctrine, had, from its oppression, a right to revolt? Had such a piece of tyranny been attempted by the king, revolt by the Whig authorities would have been instantly justified.

Again, without inquiry, much less a hearing, they passed resolutions against Lords Worcester, Halifax, Clarendon, Feversham, Lawrence Hyde, and Edward Seymour, as dangerous enemies to the king and kingdom, and promoters of popery, for having advised the king to refuse the Exclusion Bill, though that bill had not proceeded so far as ever to be presented to him.

They resolved to refuse all supplies till the bill passed; and that any one who should advance money to the government on the security of the customs or excise, should be judged a hinderer of the sitting of parliament, and made responsible for the same. Yet what law was here broken, and still more, what law gave them this power? By such usurpation all government, nay all society, was torn up by the roots.

They closed this with resolving unanimously, but without even the mockery of the inquiry played off in the murders they committed in the popish plot, that they were of opinion that London was burnt by the Papists in 1666, designing thereby to introduce popery and arbitrary power. Yet after this there came out a *just* and *modest* vindication of the two last parliaments. I should say *Risum tene-*

atis, but that Somers was supposed to have had a hand in it, and our laughter is turned into regret.

"Who would not laugh if such a man there be,
Who would not weep if Attius were he?"

May we not apply to the last vote another line of the same poet on London's column, which he says,

"Rising to the skies,
Like a tall bully, lifts its head and lies?"

What think you? Could any state exist in common safety, much less peace and happiness, with such thorns in its sides? Was there not here oppression, even "*systematic oppression*," to warrant civil war?

Are kings then the only oppressors,—the only powers in the state whose acts can create a cause for resistance?

Hallam, less wild than Mackintosh, but a reasonably devoted Whig, is just enough to give its true character to such a tyranny.

"These encroachments," says he, "under the name of privilege, were exactly in the spirit of the Long Parliament, and revived too forcibly the recollection of that awful period. It was commonly in men's mouths that 1641 was come about again. There appeared for several months a very imminent danger of civil war."*

I ask, then, if an opinion of oppression authorises

* Hallam, vol. iii. p. 192.

civil war, who were here the oppressors? Charles II., bad man as he was, or his virtuous subjects?

It was time that this House of Commons should be dissolved, and it was so; but it was succeeded by a worse, in the celebrated Oxford parliament; which, from its increased heat and violence, which Hallam (no enemy to the rights of the people) observes, served still more to alienate the peaceable part of the community*, and lasted but eight days.

The chief feature of this parliament was its immitigable rage against the Duke of York, and its persevering determination to exclude him from the throne.

Yet he had offended no law; he had usurped no power; he had been guilty of no oppression: his right to the succession was undoubted.

His only offence was being a papist, — a matter between himself and his God, and for which, at that time, the law of the land did not exclude him from the throne.

The oppression, therefore, here was on the other side.

For this, however, our political casuists provide no remedy by resistance: though, probably, a duke of Lancaster in other times, if thus injured in his rights, would have little scrupled to have asserted them, in the same manner as he asserted his claim to his estates,

* Hallam, vol. iii. p. 193.

of which he had been deprived by *oppression*, and with them obtained the crown.

I do not hold that the Duke of York would, or should, have imitated Henry IV. But had the Exclusion Bill passed — if oppression justifies revolt against the oppressor, whoever he is, I see not that the *theory* would not have permitted him to have raised a civil war, had he had the power and inclination to do it.

The rage of his enemies, the Commons, was without bounds.

It evidently exceeded all limits of reason or justice.

It was offered to banish him for life five hundred miles from England, and that if he succeeded to the crown, the power should be administered by a regent in his name. Even this sacrifice of himself to the views of the Commons was rejected, and the king might have been reduced to extremity, when a quarrel between the two houses relieved, by giving him a fair pretext to dissolve them.

They had impeached Fitzharris at the bar of the House of Lords, who they insisted should try him. The Lords refused as beneath their dignity, and referred him to the ordinary courts. The Commons took fire, and voted that *whatever court should presume to try him would be guilty of a high breach of privilege*.

These heats produced their dissolution after a session (as we have said) of only eight days. But suppose, like the Long Parliament, they could not have

been dissolved, might not the right of civil war contended for, have instantly accrued?

Were there not here *systematic oppressors*, “*who shut the gates of justice on the people, and thereby restored them to their original right of defending themselves by force**,” and was there any power but force to make them repair their wrong?

Sir James must therefore either allow the “*lawfulness*,” to use his own term, of resisting this misconduct of the Commons, by force, or give up his position.†

And this brings me to deeper speculations.

The power of supplies is, we know, exclusively in the Commons. Suppose, in order to carry some great object of usurpation which they may have at heart, that they are so mad as to stop them! Suppose that object were to make the king descend from his throne, and turn the Monarchy into a Republic! That has been attempted.

Suppose it to be, to annihilate the House of Lords, and leave themselves without check!

That has been done.

Suppose it to be, to vest the whole Indian Empire in commissioners, appointed by themselves!

That has also been tried.

Suppose it be to banish all of a particular religion possessed of a hundred a year; or suppose it to be to give themselves several thousands a year each!

All these have been essayed.

* Supra.

† Even Locke allows this.

Suppose it to be, to give themselves a right to other men's wives and daughters; to annihilate the national debt, and produce national bankruptcy; or, which is not so unlikely as these suppositions, not only to annihilate the Protestant Church, but to establish Catholicism in its stead!

Suppose, finally, it be to make Mr. O'Connell king of Ireland, after separating the two countries!

If all, or any of these measures are not granted by the rest of the legislature, suppose ALL SUPPLIES to be *stopt!*

We know the consequences. We should immediately be left without army or navy; all miscellaneous services would be at an end; all business would stagnate, and the wheels of the state would stand still.

It may be said, that this could not be, for that these despotic Commons might be dissolved.

True: but might not the same members again be returned? The enlightened reformers of our late corrupt Constitution, in order to imbue it with the proper degree of unchangeable virtue, have given such a preponderance to numbers over property, of tribes over centuries, that, aided by the still more liberal views of still farther reaching reformers, universal suffrage — that crowning object of every just man's wish — may soon take place; and then —!

Well, and then? who is to say that the defensive weapon of dissolution is not to fall from the king's hands, and the eternal power of the Commons, by

the eternal re-election of the same men, have the same effect as that fatal error which gave the eternity of power to the Long Parliament of Charles I.?

My *suppositions*, then, are not so fallacious; and some of them may be realised.

And if they are, would there not be *oppression*, and a closing of the gates of justice, to Sir James's heart's content, to justify our resuming our *original rights* of defending ourselves by force?

Cromwell did no more when he dissolved the Long Parliament, and reproached them with their "*misconduct*," which, we see in the oracle before us, justifies revolt. You recollect his emphatic words, when he entered with his soldiers.

He loaded them with the vilest reproaches for their tyranny, ambition, *oppression*, and robbing of the public: — one was a whoremaster; another an adulterer; a third a drunkard and glutton; a fourth an extortioner.*

Heaven forbid that such characters should be found among our present chaste and temperate representatives, or justify any modern Cromwell in using such language as this to the future representatives of the people, purified as they must be by universal suffrage.

"For shame!" said the would-be Protector, "get ye gone! give place to honester men — to those who

* See the histories.

will *more faithfully* discharge their trust. You are no longer a parliament: the Lord has done with you; he has chosen other instruments for carrying on his work."

Here we see the principles we have been investigating completely carried into practice against a parliament as well as a king; nor do I perceive how there can be any difference between the oppression and misconduct of the one and the other; for these being the creating motives for action against the one as well as the other, Cromwell was only right, nay, praiseworthy in what he did; and, of course, Sir James must approve.

This case, then, again shows that the representatives of a people, as well as their monarch, may be oppressors, and guilty of misconduct, and therefore be punished.

Who, if any future House of Commons should attempt any of the usurpations I have supposed, will be the Cromwell to resume the *original* right of self-defence, and put it in force against them, is a question which I venture not to answer; but this I think, that if such a *breach of trust* as stopping the supplies were ever to be committed for the avowed purpose of carrying any of the points I have supposed, according to Sir James a right of war against them by those who felt the misconduct would be instantly acquired, and, according to Locke, the trust being abused, the power would be forfeited, and devolve again upon those who gave it.

The cases of unjust usurpation I have supposed, are not all of them imaginary.

But are there no actual oppressions, or already enacted laws, esteemed to be such by many thousands, perhaps millions, of the people?

The game-laws, represented falsely, but doggedly, as the tyranny of the rich over the poor; the corn laws, decidedly bearing, however unjustly, the same character; the poor laws, tyranny itself, and even inhuman; the national debt, that incubus, which might be annihilated at a stroke; the trappings of the monarchy, which republicans say would maintain many a commonwealth; the pension list, emphatically "framed for the worthless few, at the expense of the virtuous many;" the church-rates, the tithes, and a thousand obnoxious taxes, particularly upon newspapers, monopolies, arrests for debt, and even the marriage act; both of these last, oppression, and invasion of man's natural rights! Surely there are here grievances enough, in our unhappy and rough-ridden country, to make us, according to Sir James's doctrine, rise to a man, and use our original power of resistance; or at least of administering the physic of revolution to the diseased and rotten body politic.

To be sure, the *oppressions* have all been authorised by the law, and long acquiesced in without revolt. But what then? Does that take away the right, still less the advisableness of revolting, provided, as our jurist holds, the plan is not "*ill-concerted*," and we can get reformers enough to warrant success?

I am afraid, however, that the praise of originality in this doctrine of insurrection does not belong to Sir James. The patriot Hampden (he of 1688) treats them as if of every day's allowance. When examined before the House of Lords, as to his plea of guilty, in his share of the Rye-House plot, he boldly, and certainly unanswerably, says no man will think he ought to be ashamed of it, *who thinks that Lord Russell was murdered*.—That certainly must be allowed to him who so thinks. But he adds, that the matter (insurrection) was a very common thing, and quite constitutional:—"This was the way," he says, "which *our ancestors always took* when the sovereign authority came to so great a height; as might be made out by many instances. *Custom had made this the law of England; and all civilised and well governed nations about us had used the like way*."

So far the oracle Hampden, who thus makes insurrection part of our common law, and holds it even to belong to civilisation and good government,—of which, no doubt, all the well-governed states of the world are duly sensible, and take care to put it in practice. I will only add, that this opinion of Mr. Hampden is quoted by a noble statesman of ours—himself a legislator and secretary of state, and therefore, of course, alive to all maxims of good government, at least without any mark of disapprobation or difference of opinion.*

* Life of Lord Russell, by Lord John Russell, vol. ii. p. 166.

Yet, with the greatest possible deference to one who, from his office of home secretary, must know so much better how to govern than we simple folk whom he governs, I would ask, in what state of happiness or security that man would be whose tenants or servants, if they chose to be discontented, were bred up in the notion that they had a right, and were even encouraged by the law, to destroy him, provided they were strong enough?

What would become of confidence, or sense of honour, or gratitude, the best ties of social order? It is but justice, however, to Lord John, to say, that in another place he qualifies these opinions; not, however, as to the principle, but as a matter of prudence.

"I apprehend," says he, "few men will now deny, that resistance to a government may *sometimes* be an act not only justifiable as an enterprise, but imperative as a duty."

I am sure, for one, I will not be of the few who deny this. On the contrary, I should have been glad, had I lived at the time, to have been thought worthy of siding against James.

Lord John goes on, soberly and wisely, I think, to condemn a doctrine of Lord Chatham, that it were better for the people to perish in a glorious contention for their rights, than to purchase a slavish tranquillity, at the expense of one iota of the Constitution. Lord John thinks, that a single franchise may be compensated, and abuses resisted, without taking arms.

So do you and I. "It is only," he goes on to say, "when the channels of redress are choaked up, and in danger of being totally closed, that it is the right of all men to prepare for their defence."*

This, too, is undoubted. But *cui bono*, such general truths, unless accompanied with practical illustrations in order to disclose your real meaning?

These sentences were written by the noble author, in discussing the question of the principle, as well as of the fact of the Rye-House plot, and the share his honourable and popular ancestor was supposed to have had in it. Well; is he prepared to say, that because the general principle, so generally laid down, is undeniable, that Lord Russell was justified in preparing for a *defensive* insurrection, because, not the king, but the House of Lords, (though we will grant him the king if he pleases,) had thrown out the Exclusion Bill?

Were the channels of redress in danger of "being choaked and totally closed," because the undoubted heir of the throne was not set aside for being a Papist; there being no law against it?

Yet this was the main grievance complained of, spite of an enumeration of many others (and serious ones too) made by Lord John.

For, as to some of them (for example, the removal of judges for a particular purpose, and the effects, at least, of the surrender of the charters); these had

* Life of Lord Russell.

not then taken place; the abuse of the nomination of juries by sheriffs had been begun, as we have seen, by the Whig Sheriff Bethell, against the court*, and the press was pretty much where it was.

Even Hallam admits, while also enumerating the encroachments by proclamations, on the rights of parliament, and of the subject, that there were no such general infringements of liberty in the reign of Charles II., as occurred continually before the Long Parliament.†

On the other hand, we are not to forget that the association framed by Shaftesbury against the government, and the plan, by *force of arms*, to continue the Oxford parliament, spite of the dissolution, were already contemplated, if not organised, long before any of the enumerated grievances of Lord John had been felt.

But strange to say, Lord John plainly and forcibly answers himself in the following passages:—"It is sufficient to justify the leaders of an insurrection, that the people should be thoroughly weary of suffering, and disposed to view with complacency a change of rule. Were they so in 1683? It appears to me that they were not." Then what could justify his ancestor in plotting insurrection? "Acts of oppression," Lord John proceeds to say, "had been exercised chiefly against a party, many of whom had become unpopular; the *general character* of the government

* Severely and justly blamed by Lord John himself.

† Constitutional Hist., vol. iii. p. 190, 197.

But it is said, and is allowed, that the law by which this resistance is authorised, is not, and cannot be, the law of any written constitution; for that would be a contradiction. It is one paramount to all enactments of man, namely, the moral law, or law of nature, written in our hearts.

Be it so; but all law, whether positive, or moral, must have an *obligation* to force obedience to its enactments; and what is the obligation of natural law?

A great, diversified, and much agitated question, ending, I think, (or ending in nothing,) in *religious* obligation, which thus becomes the same with moral obligation.

An excellent answer; for, no doubt, such an obligation must bind all mankind, except those who have no sense of religion.

But here, as every man that pleases, and when he pleases, may rise in insurrection, amenable to no tribunal but his own interpretation of the moral law, all definiteness in moral (that is, religious) obligation is set aside, and we are reduced to the commonwealth of atheists, or of Hobbes, and all civil security depends upon the fear of the axe and the gallows.

Am I doing Sir James injustice, in tracing this consequence from a doctrine, that it is only a *moot* question whether arms may not be wielded to obtain, as well as defend, liberty?

That there may be no doubt as to his meaning of the word "*mooting*," I beg to call your attention to

the following explanatory passages:—"It may be observed, that the rulers who obstinately persist in *withholding* from their subjects *securities* for good government, *obviously necessary* for the permanence of that blessing, generally desired by *competently informed* men, and capable of being introduced without danger to public tranquillity, appear thereby to place themselves in a state of hostility against the nation whom they govern.

"Wantonly to *prolong* a state of insecurity seems to be as much an act of aggression as to *plunge* a nation into that state.

"When a people discover their danger, they have a moral claim on their governors for security against it. *As soon as a distemper is discovered to be dangerous*, and a *safe and effectual remedy* has been found, those who withhold the remedy are as much morally answerable for the deaths that may ensue, as if they had administered poison.

"But though a REFORMATORY REVOLT may in these circumstances become *perfectly just*, it has not the same likelihood of a prosperous issue, with those insurrections which are more strictly and directly defensive."

Here, then, the mask is thrown off, and, under the mild and innocent phrase of a *reformatory revolt*, we may take arms against our governors whenever we please; not because they do not, but because they *do* govern according to law. They may be the wisest and best of princes—Trajans, Antoninuses, Alfreds,

or Henri Quatres; but we may kill, burn, and destroy them if they administer laws which, in our opinion, might be made better.

This is what I understand by the ingenious term *reformatory revolt*.

What is specifically meant by many parts of the language in which this doctrine is conveyed, I confess I cannot tell.

I can only guess, from some of the expressions, something very terrible and threatening from the governed to the governors.

The ambiguities and obscure shadows contained in the didactic parts, I in vain endeavour to make out; but when we come to acts of "*aggression*" on the parts of rulers, though none are substantively specified; and when a "*reformatory revolt*" is talked of, metaphysics are at an end, and there is something which we *could* grapple with if we knew how they came into the array where we find them.

What can we understand of *rulers obstinately withholding from their subjects securities for good government*?

What is the good government meant? What are the securities? What the *safe* and *effectual remedies*?

On these there may be ten thousand opinions.

They may mean a periodical national assembly, periodically cancelling the government, in order to make a new one: they may mean a periodical, or perpetual dictator; a mixed monarchy, an elective king; any thing that any body pleases.

I know not what exactly is in the writer's mind by the vague and indefinite term *security*, applied practically to a people, still less what is meant by the *competently informed men*, who are to decide.

In the wording of the sentence, too, it is doubtful whether it is good government, or security for it, which these *competently informed gentlemen* are said so generally to desire.

All these branches of the proposition which is *attempted* (for it is by no means perfect) must be distinctly understood, before we can reach even the idea of what is the aggression predicated, and what is aimed at by the *reformatory revolt*.

Rhetoricians are seldom logicians, though our friend had the reputation of both.

It must be owned that here, where, on account of the muttering thunder from behind this cloud, perspicuity was most wanted, he has most failed.

The generality of the phrase of *competently informed men*, though these are the men who are to judge of no less than what may be a lawful cause of civil war, is still more markedly fallacious, and is of a piece with all that vagueness and indeterminate phraseology, in which, throughout, Sir James does not hesitate to hazard the most dangerous propositions.

He, himself, is a storehouse of information; and what may appear to be competent information to me, may seem ignorance to him. What I may think ignorance, another may be content with. What he may think information, I may think madness.

Must we not therefore reject his proposition, for want of more light, where he lays down in such unintelligible generality, though it may lead to domestic horrors, *that if securities for good government desired by competently informed men are refused*, revolt and civil war may lawfully follow?

Let us try this competency by its effects.

I have heard that Mr. Owen is not only competently, but well informed.

Will Sir James elect him as a judge of good government, or the securities for it; and allow him to tell us when we are to rise to claim it? Will Mr. Bentham do? or will Mr. Muirson satisfy him?

Who is Mr. Muirson? —

A gentleman who has evidently, and deeply, studied the subject, as well as Sir James; and evinces quite as much zeal upon it, though inferior to him, probably, upon all others. Witness a pamphlet which he wrote, and read at a meeting, sometime since at the Crown and Anchor, of the working classes, on *Spanish affairs*; which, of course, they must have profoundly understood. That they were at least *competently* informed upon it, appears from their discovering that in Spain there was no House of Peers; and *therefore* "it would be a national blessing if our House was swept away, with all its appendant rubbish."

Mr. Muirson, however, was more particular. He read from his pamphlet (sold at the door for one penny) the following "Outline of a new constitution, such as should be submitted to the British nation,

assembled as a people upon the principles of association, and in social union, to form and enact a social compact."

"It is decreed, by order of the people, *in social union assembled* —

"That all kingly authority, all hereditary titles, privileges, and all laws of primogeniture and entail, be for ever abolished.

"That there be no state religion.

"A national legislative assembly, to be elected by ballot and universal suffrage. Ireland, as well as the colonies, shall *constitute* and legislate for themselves.

"All the Crown lands, Church lands, waste lands, and whatever else at this time be *constituted* national property, shall be immediately taken possession of in the name of the nation.

"The people shall be armed, so that they shall be at all times prepared to resist oppression and assert their rights.

"Every soldier, who has *co-operated in social union with the people in order to re-conquer and obtain their natural and just rights*, to have sixteen acres of the best land, rent free for life.*

"England looks up for, and wants a leader of courage, capacity, and action, around whose patriotic genius all men whose bosoms glow with the sacred love of liberty, will unite their efforts to *rescue* their

* Is this one of Sir James's securities?

suffering countrymen from the *yoke of bondage, which has so long, and so cruelly oppressed, and which still so shamefully degrades it.*"

Such was Mr. Muirson's address; and surely he must be one of the *competently informed*, particularly on questions of constitutional law; for the report said, he was vociferously applauded by an audience, who said that, with the assistance of the *member for Kilkenny*, they had no fear of being able to *reconstruct* the British Constitution.*

I fear you will think I am trifling with your patience, in intruding this apparent burlesque upon you. Believe me, I never was more serious; nor do I think it would be possible to produce a more sound, or practical comment upon almost all the constitutional doctrines in Sir James's book, particularly the last I have reviewed.

Wild, exaggerated, treasonable as the proposals are, ridiculous as may seem the power, or the knowledge of such an assembly, there is no one feature of the transactions, nor one principle or assertion of the address, which is not in unison with, and founded upon the whole doctrine of resistance, in all its ramifications, and emphatically on his last-mentioned theories of a reformatory revolt, contained in Sir James's work.

* See *The Times*, August 14. 1836.—*The Sun* subjoins, that the audience, though composed of the working classes, handled the subject so well, as to leave no regret for the absence of parliamentary orators.

It is true, with us, no aggression is, or can be pointed out. The king is no tyrant. His is a reign of law, of kindness, of moderation and good will; and his measures have been the reverse of oppressive. But what of that?—According to the advocate for resistance, a mere desire in subjects to obtain more liberty than they have, and without any attack upon *what they have*, will justify their taking arms, *provided there is a chance of success*; which these gentlemen of the Crown and Anchor say they have.

We see they already cry out that they are in a bondage, which has long and cruelly oppressed them. Well; have they not, according to Sir James, a right to a *reformatory revolt*? Have they not a right to think as well as others? The *Sun* newspaper says, they think as well as the reformed Parliament. Are they not, then, "men, competently informed?" and may they not decide therefore on what are the *best securities* for the *good government* they demand?

Could I have supposed Mr. Muirson meant to have laughed Sir James's proposition out of countenance, I should have thought he would have framed the exact proposal for an amended constitution, and called this meeting expressly for the purpose.

All falls in with the many other proofs, in the book I am presenting to you, of how dark, how ambiguous, and therefore how dangerous to be followed on questions of political law, it is possible for a mind to be; luminous, beautiful, and eminently cultivated in all other respects.

But here I am aware of the saving clause in Sir James's theory, of which it would be injustice to him not to take notice. The securities to be demanded must be "capable of being introduced *without danger to public tranquillity*."

Here, again, is the sad error of legislating "in generalities," if the object is to legalise a given practical case.

Amidst the thousand different feelings and opinions which agitate mankind on political measures, the party spirit, the blind prejudices, the personal interests that ever prevail, (particularly in a mixed government,) who is to say what will or will not be "dangerous to public tranquillity?" Besides, if refused by the ruling powers, (say, in England, the King, Lords, and Commons,) that instant, according to Sir James, "they place themselves in a state of hostility to the nation. Wantonly to *prolong* a state of insecurity, seems to be as much *an aggression* as to plunge a nation into that state." We know pretty clearly now, what are to be the consequences of this aggression.

Is this then the wisdom that Sir James would teach us — that we are to live in constant apprehension of tumult and revolt, our security from which may be destroyed whenever any fool, any visionary, or any wicked person chooses to propose what HE thinks may be granted by the legislature *without endangering public tranquillity*, but upon which, unfortunately, the legislature may hold a different opinion? In short,

that it is never duty and allegiance, but mere prudence, that is to preserve our safety in society?

With submission, this saving clause, that the security (that is, the *alteration*) in question, is to be introduced without danger to tranquillity, yet give a right of insurrection if not granted, is a contradictory proposition. The mere demand of the security, (however tranquilly it might be introduced if adopted immediately,) if refused, breaks the tranquillity. What should we say to a robber who demands a man's purse, with this persuasive speech,—“You can give it, if you please, without the least breach of tranquillity; but if you do not, I will blow your brains out!”

Many demands upon the legislature may illustrate the refutation of this wild doctrine. Take one. Voting by ballot may, by many, be deemed a security for good government. It certainly might be introduced without danger to public security. But it is refused; and thereby *an aggression* is committed.

The legislature “has placed itself in a state of hostility to the nation;” and those who think the ballot a security for liberty, have an instant right of insurrection.

Will this hold for a moment?

These are mere sophistries that cannot be admitted in a code of law.

But how then, it may be asked, do you resist a robber?

By sheer force, upon the sudden emergency; the

right to which you have, (as I said,) by the law of self-defence, which is the law of nature. But before I do this, I do not attempt to reason about his having broken a compact with society when he entered it, or about my having retained a power to take the law into my own hands when he did so.

You allow then, an antagonist may say, that you would repress grievances by the sword, if there were no other mode. Say rather, repel an attack; which I certainly would do, provided there were no other remedy.

But I would do it on the principle I have alluded to, of self-defence, *when the case arises*; of which I must judge at the risk of my neck: for if I am wrong, or if I do not succeed, I shall certainly be either shot by the robber or hanged by the law. I would, therefore, not busy myself with a metaphysical right, or provide for cases of necessity which have not arisen.

Should a king then attack your person, or house, with no warrant of law ———! I would shoot him, as well as the robber, if I could not defend myself without it; but not in virtue of my dormant sovereignty, revived for the occasion.

How infinitely more rational, upon this subject, is the clear and cool-judging Blackstone! He is as fully aware of the difficulty of treating a case of necessity as Sir James; but he extricates himself from it with prudence, because he seeks not to generalise, or legislate universally for cares that cannot be foreseen, and

can only be met by temporary measures. He felt and practised Sir James's own maxim, — which Sir James himself did not. He did not attempt to "look for regularity in a sudden and unprecedented crisis, where all was irregular.*" He is as free as our jurist in applying remedies where wanted, *pro re natâ*; but he does not, on that account, endeavour to render (to use a forcible illustration of Burke,) "the medicine of the commonwealth its daily bread."

Locke, in his warm zeal for liberty and just hostility to the divine right of kings, fell into an extreme on the opposite side, which republicans are fond of quoting. "There remains," says he, "still inherent in the people a supreme power to *remove* or *alter* the legislative, when they find the legislative act contrary to the *trust* reposed in them; for when such a trust is abused, it is thereby forfeited and devolves to those who gave it."†

Here we are evidently again at sea. For, again, supposing a fact which does not exist, that the people in form assembled to frame a government, and, in the first instance, resolved *unanimously* (I should say women as well as men, and certainly many of those called infants in the eye of the law‡) to abide by the determination of a majority, still the question recurs, What is trust? what the abuse of it? and,

* Mackintosh, vol. ii. p. 282.

† On Government, p. 2. s. 149. 227.

‡ If a boy of seventeen may be and act as an executor, or be a father, why may he not vote in the formation of a government?

above all, who is to judge? If every man, it is evident you can have reliance on no man.

The name of Locke is such a host to whatever side he takes, that it is not easy to grapple with it; but here his position is so obviously weak, that nothing but a theorist's enthusiasm for his theory could have induced him to hazard it. As a theorem in abstract philosophy, to be worked out, if it can, by thought and reflection,—as a question to exercise the mind in the closet, like other abstruse questions in science, (the philosopher's stone for instance,) to a cool, not a hot brain, there may be no danger in treating it. As a practical position, ever to be laid down fundamentally to guide the interpretation of laws, and be *pleadable* in a defence for an *unsuccessful* revolt, it can but entrap the judgment; and, if the revolt is successful, it is unnecessary. It therefore resolves itself into feeling, or the right of the strongest, — which surely can have no place in a treatise on law.

Well then has Blackstone observed upon it:—“However just this conclusion may be in theory, we cannot practically adopt it, nor take any legal steps for carrying it into execution, *under any dispensation of government at present actually existing*. For this devolution of power to the people at large, includes in it a dissolution of the whole form of government by that people* ; reduces all the members

* Which form never was so established.

to their original equality* ; and, by annihilating the sovereign power, repeals all positive laws whatsoever before enacted. No human laws will therefore suppose a case which at once must destroy all law, and compel men to build afresh upon a new foundation; nor will they make provision for so desperate an event as must render all legal provisions ineffectual.”†

This is excellent sense, and if their theories are proclaimed, with a view to practical consequences, blows the theorists to atoms whoever they may be.

There is one thing, however, in these passages of Blackstone, which I do not understand; the meaning of the words “under any dispensation of government *at present actually existing*.” Did it ever exist? Can it exist?

Those who may agree with me will say, No.

For though a code of laws may foresee and describe a case wherein a *king* may be deposed, (as where he breaks any given law,) that king, whatever his title, cannot be a sovereign. If he can be a legal delinquent, he must have a legal judge, and that judge is sovereign over him.

This was exemplified in the Ephori of Sparta; and if we suppose the code to describe the functionary who is thus triable as the real sovereign of the state, who therefore can have no superior, the assertion is a solecism, for he has one.

* Which original equality never existed.

† Comment, vol. i. p. 61.

A sophism of this kind appears in the work of the sophist Paine, I think in his Rights of Man.

He there held this (not even specious) contradiction, laying it down that the sovereignty might by law be subject to the people; and his exemplification was the constitution of one of the American states, in which there was a sovereignty with all legislative and executive powers, but reviewable at the end of fifteen years, by an assembly of the people who might take it away.

Who did not see that the word sovereignty was here inaccurate? for that there were here two governing powers, one paramount, one subordinate: one, the Assembly, the real sovereign; the other, its deputy for a definite period.

It is five and forty years since I read this blunder, probably a wilful one of a man who was supposed to have the power of enlightening us. It glared upon me, though then a young man, and I never forgot it.

Can I, or ought I to quit this division of the subject, without investigating the far-famed question of the Sovereignty of the People itself, founded upon rights supposed by many, besides Mackintosh, to be clear, admitted, *inalienable*, and *resumable*, because paramount to all other authority, even though derived from themselves?*

* How can any possession over which a man has the absolute control, in his own right, be *inalienable*? If it is, he has not that control. Liberty is a possession of this kind. A man who has it, is lord of himself; and being so, what is to prevent him from disposing of himself

To this therefore I hasten, and will close (not I fear before you have wished,) what it has occurred to me to remark, upon this first of the four sections into which I proposed dividing my observations upon Sir James's work.

for a valuable consideration, or no consideration at all: Jacob served Laban seven years for each of his two wives (Leah's a dear purchase.) The ancient Germans, according to Tacitus, were so fond of gaming, that they sometimes staked themselves, that is, their liberty upon the hazard of chance. If liberty is *inalienable*, how could this have been? Suppose an unfortunate but metaphysical gamester, had refused paying the stakes, and resumed his power over himself on this plea, would not his new master have accused him of having cheated at play?

SECTION II.

OF THE SOVEREIGNTY OF THE PEOPLE, AND THE
SOCIAL COMPACT.

SINCE the Revolution, and the celebrated debates upon these questions, ending in the celebrated finding of both Houses of Parliament, that there was such a compact, and that James had broken it, all Englishmen, at least all good Whigs would be scandalised to hear it questioned. I ought therefore to fear and tremble, when I confess that in this doctrine, I never could see any thing more than a supposititious case, which never really happened, but was created merely for the better educing and illustrating the duties of governments.

Abstract principles are generally more difficult to demonstrate, particularly by arguments *a priori*, or even by analogy, than to gather them by a plain deduction from a tangible case.

The theories therefore of the political philosophers, as to the reciprocal duties of sovereign and subject, were infinitely more capable of practical demonstration by supposing what might, but what never

did happen, that wild and independent men living in solitary freedom, in woods and caves, left them for the purpose of associating together, and framing a government for their better security. Not only this, but that these savages entered into a compact with those whom they chose for their governors, in which the ramified and mutual duties of obedience and protection, and the exact boundaries of power on one side, and subjection on the other, were all pointed out, with a defeasance, as the lawyers term it, should the conditions be not observed. This, I say, was a far more convenient way of elucidating the theory and science of government, than mere speculative truths without such an example to illustrate them.

As such a convenient mode of elucidation, I am willing to adopt it. As a case that ever happened, and as the actual origin of government, I never could bring my mind to admit it. The utmost that can be said for it is, that it may be implied from the reason and nature of things, and, had the Convention Parliament voted that it was so implied, perhaps it would not have been so objectionable; though about reason and the nature of things how many are the differences of opinion, I need not to your experienced mind point out.

To be sure, the Convention voted it: but will that make it binding upon our belief?

Suppose they had voted that there was no God: would that have demonstrated such a proposition?

In reference to the opinion quoted from Locke, I have asked what is meant by a trust?

Surely it is not meant to be that technical instrument in law which appoints, by a known formulary, one person to hold a benefit for the use of another?

But, even if Locke meant it so, could he who appointed the trust resume it himself, let it be ever so much abused?

The reason is, because no man can be a judge in his own case. The law, therefore, in cases of abuse, appoints other parties to take cognisance of, and decide the question. But the word had not this literal technical meaning, even with Locke.

It is evidently a metaphysical supposition, the better to illustrate a particular doctrine in morals, as well as in politics.

Under this, as a legal deed of trust *enacts* certain duties to be performed, in failure of which, the power may be resumed under a decree by competent and known authority; so, for the better exposition of the reciprocal duties of governors and governed, or of men generally, a case is supposed which never actually happened, and a trust is *impliedly* granted by one party to another, as if both were in a state of civil society, when, in point of fact to have been so, the trust supposed must have already been executed.

For, to pursue this matter:—if we allow what is falsely, I think, presumed, that there ever was a state of man without government, that is, when every man

was his own absolute master, like any other animal; it is clear that in such a state, from the very description of it, no such trust, express or implied, could have existed, for there were neither governors nor governed.

And when a government was at last constituted, as is supposed by common consent, there must have been a previous common consent to abide by such institution; which instantly supposes a society already formed; and there must have been a still earlier trust from every man to every man for that purpose.

This, however, is a state which the most liberal theorist, as to the origin of government, has never ventured to suppose; and is not only not supported, but contradicted by whatever history remains to us of the earliest times.

By this history it is fair to suppose, that the first governments were patriarchal, which by no means implies divine right;—a doctrine long exploded, and reduced to mere speculation, amusing in the reveries of contemplative men, but not admissible by true philosophy.

Yet so, also, seems this supposition of an actual trust, or contract, between people and their sovereign, entered upon by the respective parties: the one executing, the other receiving it upon known conditions.

I do not say that no instance of such a transaction is to be found in history.

Exiles and outlaws have, I think, in one or two instances, been known to have agreed to stand by one another to find a settlement, and have elected a chief; but with these exceptions, there is no proof, that the general origin of states sprang from this asserted trust or contract.

We, therefore, as has been observed, start an *imaginary* transaction, only as a more convenient vehicle to convey more clearly our notions of duty in our different relations one to another.

In this sense, we say we are stewards or trustees of the fortune which God may have given us, for the proper use and distribution of it; and Locke might just as well, and with as much reason, have asserted, that if we abuse the gift by waste or profligacy, the law by which we hold it might take it from us, and devolve it upon some other person more worthy.

Indeed, what is more common than for pious, or merely moral men, to hold by a metaphor, as it were, that the rich are only trustees or stewards for the poor?

For the better expounding the rationale of our duties, this is convenient in a code of morals.

But what right it would give the poor, even had they arms in their hands, to resume their supposed property from these their metaphorical trustees, I will not inquire. Yet if the trusteeship of sovereigns is also only metaphorical, and not an actual fact, I see not why the doctrine might not prevail in one case as well as in the other; especially as in both, the *cestuiqui* trust is

the sole judge (according to the theory,) when the trust is abused, and, therefore, when it may be resumed. Hence, I entirely concur with the observation of Hume, that, though the principle is noble in itself and seems specious, *that the people* are the origin of all just power, it is *belied* by all history and experience*; and I recur again to the support of the candid and liberal Hallam, who allows that the idea of an original contract "seems rather too *theoretical*, yet necessary *at that time*, as denying the divine origin of monarchy, from which its absolute and indefeasible authority had been plausibly derived."† If this be the only reason that made the doctrine necessary, the doctrine itself is evidently not genuine, especially as from our improved knowledge it is necessary no longer.

Upon the whole then, even the great Locke must, I think, in this opinion be pronounced inaccurate; probably from being hurried on by zeal into another extreme, at a time when boldness and extreme principles of liberty were required to meet and confute extreme principles of divine right.

It is certain, that to me the cooler judgment of Blackstone on this question seems not only preferable, but the true one.

Now to examine the nature of this sovereignty of the people a little farther.

* Hist., vol. vii. p. 134.

† Constitutional Hist. vol. iii. p. 349.

It is said that Frederick II. king of Prussia, once contemplating the turbulent character, and at the same time the power and resources of the English, exclaimed, "Gallant nation! why am I not your king with an army of 80,000 men, and a score of executioners in my train! what would I not make of you!"

This bespoke gross tyranny on the part of Frederick, and a pretty correct exhibition of the right of the strongest.

Well! a million of men, with arms in their hands, find themselves subjects to a weak king. But though weak, he is a just king; a lawful king; a king whom, and whose ancestors, they and their ancestors have always obeyed!

But they think, or choose to think, they can be happier without a king; so, as he cannot resist, and the law has not a million of armed men on its side, they dethrone—perhaps, for greater security, kill him. Had they a right to do this, either by law or reason? or, if a right, is it not the right of the strongest, as much as what we have supposed of Frederick II.?

No! says a liberal jurist: for the million (that is, the people,) are sovereigns; the king only their servant, whom they have a right to dismiss when they please.

And what gives them this right? Their numerical force? their swords if they choose to employ them? which the king cannot resist.

No! again says the jurist: for you forget that

each of the million, or his father before him, had an absolute power over himself, of whom he was therefore sovereign; and it is from this only, *by delegation*, that a king, or government can assume dominion over the whole; and the million has only *delegated* this sovereignty to the government upon certain conditions.

Which, if the king keep, it cannot be resumed except by power?

Just so!

Then how are the people sovereigns, who have parted with their sovereignty?

They are not, unless the conditions are broken; when all is as it was, and each man again becomes his own sovereign.

Till that happen then, at least, there is no sovereignty in the people, but what may be derived from their physical force; which if they use, they on their side break their compact as much as a king who sets himself above the law.

Not so; for their sovereignty only *lies dormant*, to revive again, when those from whom, and for whom alone it has been delegated, choose to alter their minds.

That is what I cannot comprehend. For it must either be absolutely and for ever extinguished, or it must be somewhere latent, with some known depository; and who is to demonstrate that they have altered their minds?

Themselves.

That again seems strange. For I never heard of

a contract binding upon two parties, in which one might be off whenever he pleased.

If not whenever he pleases, at least when the other party breaks the conditions.

That is the same thing, *if the discontented party is to be the sole judge* of the case when the conditions are broken. But you say expressly "whenever he pleases," when you talk of a *reformatory* revolt; which supposes only *discontent* with the conditions, not that they are broken. The whole therefore is a string of contradictions.

For the people are at first sovereigns; then they are not sovereigns, for they have given up the sovereignty; then they are sovereigns again, because the sovereignty they had parted with had always remained in their own keeping, and they only parted with the exercise of it for a time, of which time they were themselves to be the masters. How can this be?

From their sovereignty being inalienable.

But your supposition says it has been alienated, which comes to an absurdity. If resumed, therefore, it cannot be from its having only lain dormant, but from a *new* creation acquired by force, and is therefore what I set out with, the right of the strongest.

In short, argue as long as we will, no servant can be master as well as servant, without a contradiction of terms; and if a servant can sit in judgment on his master, in any supposable case, *of which he himself is the judge*, there is an end of the relation between them.

Granting this, says my opponent, what if the master attempt to cut the servant's throat?

The servant may knock him down; but not in virtue of a reserved right expressed in the contract, still less of any supposed mastery over the master, retained at the hiring.

Yet what is it, again replies my adversary, but the case of two independent nations that go to war? suppose for the breach of a treaty.

Each being sovereign, each decides for itself, for there is no common judge. This is the case between a king and a people.

That again is a fallacy; for, by the supposition, the people are not an independent nation, but owe obedience to their rulers, which neither of your independent states does to the other. The comparison therefore will not hold.

May I not then resist oppression?

Yes, certainly, by the right of self defence; but not by any provision of law, still less by any fanciful notion, by implication from premises that do not exist. Such, as that you have surrendered your sovereignty yet still preserve it, and alienated a right which remains inalienable.

Such I have presumed to suppose would be the argument upon this question between a man of plain sense, and a professor of, what is called, liberal principles. The plain man, you see, is as great a supporter as the other of the natural right of resistance against a case of oppression sufficient to call for

it, *when it happens*; but he does not entangle it, like Mackintosh, by laying down beforehand what causes are to justify this resistance; still less the outrageous doctrine of a reformatory revolt, or the right to demand securities beyond the existing constitution, at the pleasure of the governed. The plain man, too, lays aside all sophistical notions of the inherent, never dying, inalienable, and unalterable right of sovereignty in the people, which he thinks does not exist; and, which if it did, would, and under bold and visionary or wicked men, does involve us in consequences destructive of all security.

The dangerous effects which may flow from this doctrine are so well drawn out and displayed by, in my opinion, the wisest intellect of his time, that I think I shall do well in reproducing it upon this occasion. It is Burke who will speak.

He is reviewing the position that the majority in a state can never be wrong; and that, therefore, whatever they *will*, whether to erect, alter, or destroy a constitution, and whatever miseries may flow from it, *must* be right.

In discussing this, by way of showing how this majority may be and often, unfortunately, *is* obtained, he describes the steps that may be and often are pursued. The argument for their position is thus stated:—

“The sum total of every people is composed of its units. Every individual must have a right to originate what *afterwards* is to become the act of the

majority. Whatever he may lawfully originate he may lawfully endeavour to accomplish.

“He has a right, therefore, in his own particular, to break the ties and engagements which bind him to the country where he lives; and he has a right to make as many converts to his opinions, and to obtain as many associates in his designs as he can procure;—for how can you know the dispositions of the majority to destroy their government, but by tampering with some part of their body?

“*You must begin by a secret conspiracy, that you may end with a national confederation.*

“The mere pleasure of the beginning must be the sole guide; since the mere pleasure of others must be the sole ultimate sanction, as well as the sole actuating principle in every part of the progress.”

So far the reasoning on the right of the people to overturn a constitution. On this Burke observes:—

“Thus *arbitrary* will, the last corruption of power, step by step, poisons the heart of every citizen.

“If the undertaker fails, he has the misfortune of a rebel but not the guilt.

“By such doctrines all love to our country, all pious veneration and attachment to its laws and customs, are obliterated from our minds; and nothing can result from this opinion, when grown into a principle, and animated by discontent, ambition, or enthusiasm but a series of conspiracies and seditions, sometimes ruinous to their authors, always noxious to the state.

No sense of duty can prevent any man from being a leader, or a follower in such enterprises. Nothing restrains the tempter, nothing guards the tempted. Nor is the new state, fabricated by such arts, safer than the old.

"What can prevent the mere will of any person, who hopes to unite the wills of others to his own, from an attempt wholly to overturn it? It wants nothing but a *disposition* to trouble the established order, to *give a tittle to the enterprise*."

Again:—

"When you combine this principle of the *right to change* a fixed and tolerable constitution at pleasure, with the theory and practice of the French Assembly, the irregularity is, if possible, aggravated. There is a far more commodious road to the destruction of an old government, and the legitimate formation of a new one.

"*Get the possession of power, by any means you can, into your hands, and then a subsequent consent (what they call an address of adhesion,) makes your authority as much the act of the people, as if they had conferred upon you originally that kind and degree of power which, without their permission, you had seized upon.*

"This is to give a direct sanction to fraud, hypocrisy, perjury, and the breach of the most sacred trusts that can exist between man and man.*

"What can sound with such horrid discordance in

* This was exactly the case of Cromwell and Bonaparte.

the moral ear as this position?—That a delegate, with limited powers, may break his sworn engagements to his constituents, assume an authority never committed to him to alter things at his pleasure; and then, if he can persuade a large number of men to flatter him in the power he has usurped, that he is absolved in his own conscience, and ought to stand acquitted in the eyes of mankind. On this scheme, the maker of the experiment must begin with a determined perjury. That point is certain. He must take his chance for the expiatory addresses. *This is to make the success of villainy the standard of innocence.*

"Without drawing on, therefore, very shocking consequences, neither by previous consent, nor by subsequent ratification of a mere *reckoned* majority, can any set of men attempt to dissolve the state at their pleasure."

This reasoning, so cogent in argument, and so perspicuous in style, seems to me irrefutable. Let us now consider his notions of that mystical phrase "The People," so entitled to our veneration, so extravagantly abused.

"Believing it therefore a question at least arduous in the theory, and in the practice very critical, it would become us to ascertain, as well as we can, what form it is that our incantations are about to call up from darkness and the sleep of ages, when the *supreme authority* of the people is in question. Before we attempt to extend or confine it, we ought to fix in

our minds, with some degree of distinctness, an idea of what it is we mean, when we say THE PEOPLE.

"In a state of rude nature there is no such thing as a people. A number of men *in themselves* have no collective capacity. The idea of a people, is the idea of a corporation. It is wholly *artificial*, and made, like all other legal fictions, *by common agreement*. What the particular nature of that agreement was, is collected from the form into which the particular society has been cast. Any other is not *their* covenant.

"When men therefore *break up* the original compact or agreement, which gives its corporate form and capacity to a state, *they are no longer a people*; they have no longer a corporate existence; they have no longer a legal coactive force to bind within, nor a claim to be recognised abroad. They are a number of vague, loose individuals, and nothing more. With them, all is to begin again. Alas! they little know how many a weary step is to be taken, before they can form themselves into a mass, which has a true politic personality.

"We hear much from men who have not acquired their hardiness of assertion from the profundity of their thinking, about the omnipotence of a majority in such a dissolution of an ancient society as hath taken place in France. But amongst men so disbanded, there can be no such thing as majority or minority, or power in any one person to bind another. The power of acting by a majority, which gentlemen

theorists seem to assume so readily, after they have violated the contract out of which it has arisen, (if at all it existed,) must be grounded on two assumptions: first, that of an incorporation produced by unanimity; and secondly, by an *unanimous* agreement, that the act of a mere majority (say of one) shall pass with them, and with others, as the act of the whole.

"We are so little affected by things habitual, that we consider this idea of the decision of a *majority*, as if it were a law of our original nature: but such a constructive whole, residing in a part only, *is one of the most violent fictions of positive law* that ever has been, or can be made, on the principle of artificial incorporation. Out of civil society, Nature knows nothing of it; nor are men, even when arranged according to civil order, otherwise than by very long training, brought at all to submit to it.

"If men dissolve their ancient incorporation in order to regenerate their community, in that state of things each man has a right, if he pleases, to remain an individual. Any number of individuals who can agree upon it, have an undoubted right to form themselves into a state apart, and wholly independent. If any of these is *forced* into the fellowship of another, this is *conquest*, and not *compact*."

Again: —

"As, in the abstract, it is perfectly clear that, out of a state of civil society, majority and minority are relations which can have no existence; and that in

civil society, its own specific conventions in each corporation determine what it is that constitutes the people, so as to make their act the signification of the general will; it is equally clear that neither in France nor England has the original or any subsequent compact of the state, express or implied, constituted a majority of men, *told by the head*, to be the acting people of their several communities.

"And I see as little of policy or utility, as there is of right, in laying down a principle that a majority of men, *told by the head*, are to be considered as the people, and that, as such, their will is to be law."

Mr. Burke then argues that a people, possessing such powers as are here ascribed to them, can only be those who are divided according to the rules and classifications of society, into which they fall from the nature of things.

"Give once (says he) a certain constitution of things, which produces a variety of conditions and circumstances in a state; and, there is in nature and reason a principle which, for their own benefit postpones, not the interest, but the judgment of those who are *numero plures*, to those who are *virtute et honore majores*."

He then luxuriates in a noble as well as beautiful and philosophical account of a natural aristocracy, which, he says, is NOT a separate interest in the state, nor separable from it. (Nothing more true!)

It is (he observes) an essential integrant part of any large body *rightly* constituted. It is formed out

of a class of legitimate presumptions, which, taken as generalities, must be admitted as actual truths.

"To be bred in a place of estimation; to see nothing low or sordid from one's infancy; to be taught to respect one's self; to be habituated to the censorial inspection of the public eye; to look early to public opinion; to stand upon such elevated ground, as to be enabled to take a large view of the wide-spread and infinitely diversified combinations of men and affairs in a large society; to have leisure to read, reflect, and converse; to be enabled to draw the court and attention of the wise and learned, whenever they are to be found; to be habituated in armies to command and to obey; to be taught to despise danger in the pursuit of honour and of duty; to be led to a guarded regulated conduct, from a sense that you are considered as an instructor of your fellow-citizens in their highest concerns; to be employed as an administrator of law and justice, and to be thereby amongst the first benefactors of mankind; to be a professor of high science, or of liberal and ingenuous art; to be amongst rich traders, who, from their success, are presumed to have sharp and vigorous understandings; these are the circumstances of men, that form what I should call a NATURAL ARISTOCRACY, *without which there is no nation*.

"When great multitudes act together under *this discipline of Nature*, I recognise THE PEOPLE.

"In all things, the voice of this grand chorus of national harmony ought to have a mighty and de-

cisive influence. But when you disturb this harmony; when you break up this beautiful order, this array of truth and nature, as well as of habit and prejudice; *when you separate the common sort of men from their proper chieftains, so as to form them into an adverse army*; I no longer know that venerable object called the PEOPLE, in such a disbanded race of deserters and vagabonds. For a while they may be terrible indeed, as wild beasts are terrible. The mind owes to them no sort of submission. They are, as they have always been reputed, REBELS. They may lawfully be fought with, and brought under, whenever an advantage offers.

"Those who attempt by outrage and violence to deprive men of any advantage which they hold under the laws, and to destroy the natural order of life, proclaim war against them." *

Thus far this admirable man on the point immediately before us. But can I quit him, long as these extracts are, without adding the sportive use he makes, in winding up his argument, of the ludicrous but important account which Walsingham gives of the preaching of Doctor Ball to 20,000 men assembled on Blackheath, by which he says it is plain that the Abbé Ball understood (though so long before him) the rights of men quite as well as the Abbé Gregoire; and, he might have added, as Tom Paine himself.

* Appeal of new Whigs to the old.

The Abbé Ball preached from *this* text, as all our modern reformers do in this day.

"When Adam dalfé and Eve span,
Who was then the gentleman?"

Walsingham then details the sermon as follows:—

"Nitebatur per verba proverbii quod pro themate sumpserat, introducere et probare *ab initio omnes pares creatos a natura*—servitutem per injustam oppressionem nequam hominum introductam contra Dei voluntatem. Quia, si Deo placuisset servos creasse, utique in principio mundi constituisset, quis servus quisve dominus futurus fuisset. Considerarant igitur jam tempus a Deo datum eis (in quo deposito servitutis jugo diutius), possent, si vellent, libertate diu concupita gaudere. Quapropter monuit ut essent vivi cordati, et amore boni patris familias excolentis agrum suum, et extirpantis ac resecantis noxia gramina quæ fruges solent opprimere, et isti in præsentī facere festinarent, primo *majores regni dominos occidendo*; deinde *juridicos, justiciarios et juratores patriæ* perimendo; postremo quoscunque scirent in posterum communitati nocivos tollerant de terra sua: sic demum et pacem sibimet parerent et securitatem in futurum, si sublati majoribus esset inter eos, æqua libertas, eadem nobilitas, par dignitas, similisque potestas."

Here was reform with a vengeance; and so very like the modern reforms, acted upon in France, and proposed at many of our meetings here (not quite so numerous indeed, but equally patriotic), that being

preached near 500 years ago, it must deprive our reforming sages of all pretension to originality.

The similarity also holds in the effects; for the majesty and sovereignty of the people on Blackheath being thus moved, they all by acclamation declared that the reformer Ball should be Archbishop and Lord Chancellor; a consummation which no doubt would be very agreeable to some of our present demagogues. In sober seriousness, I see no reason why their 200,000 majesties on Blackheath, and the Apostle of Liberty and Equality, Ball, had not as much a right to call themselves the PEOPLE, and as such, by virtue of their sovereignty, to command the deaths of all the then holders of property and power, and change the monarchy into a republic, as any of the self-elected apostles of liberty and enlightened philosophy now in England.

And with this we close these great theoretical questions, in order to hasten to the practical, and perhaps more important one, that still remains, and which, though last in order, has been in fact the foundation of the other two. I mean the real amount of the precedent of 1688, and the doctrines that have been derived from it, together with the real character of its managers, stript of all extraneous glosses, with which partiality, love of theory, blind admiration, or blind condemnation have surrounded them.

SECTION III.

REVOLUTION OF 1688.

UNDER this great settlement of our Constitution, this nation has enjoyed, and may still enjoy (unless destroyed by some suicidal act of its own), more, I think, of rational liberty, and better secured, than any other nation since time began.

But it was not obtained except at the expense of political controversies which have lasted from that time to this; a cheap purchase, if it end not, through the madness of the controversialists, in the destruction (though upon other and more extreme principles) of what the Revolution had sought to secure.

Two parties, as you well know, have been embattled against one another ever since this great event; each of them extolling, each approving, but at the same time drawing from it very different conclusions.

The one raising upon it all those doctrines, and more, which we have been reviewing, respecting the general right of resistance, the inalienable sovereignty

of the people, and their rights beyond the law, over their monarchs; the other contenting themselves with looking upon it as a case of necessity, which was met with the greater wisdom, because, as they contend, no new or untenable principles in the science of government were engendered, no dangerous usurpations of force over law accomplished; so that, while our liberties were enforced, the harmony and security of society were not disturbed.

Those who contend for the first, assert that it is *proved* that we have a right “to *revoke* abused power, cashier our governors for misconduct, elect others in their room to *frame a government* for ourselves, and *bestow the crown*” as we please.

So said Mackintosh in his “*Vindiciæ Gallicæ* ;” so said Price in his famous sermon.

The opinions of Locke we have already noticed.

These tenets were all warmly *opposed*, and eloquently *exposed*, by a number of statesmen and constitutional lawyers, (Mr Burke their leader and powerful chief,) who saw the danger of so destroying all the foundations which support civil society, as these principles, if carried as far as they would lead, would inevitably do. Burke therefore met the whole question in all its modifications, in perhaps the most celebrated of his works, the “*Reflections on the French Revolution*,” and afterwards in several others supplementary to it.

Let us examine these propositions, and see how they are borne out by the history; we shall then be

able to tell, stript of their colours of rhetoric, to what they really amount.

The doctrine of Locke upon the devolution of the sovereignty to the people, when the trust, supposed, in legal form, to have been committed to their governors, has been abused, and upon the consequent right which he says they have to *remove* and *alter* the legislature—as if all society were to begin again—this has been so satisfactorily answered by Blackstone*, that I shall not revert to it again in this letter, though I may consider his whole philosophy on the subject, more at large, in a question by itself.† But the amplification of this tenet by Sir James requires more attention.

“The Revolution of 1688,” he observes, “*is confessed* to have *established principles*, by those who lament that it has not reformed institutions.”‡

Where is this confessed? what principles has it established, not known before? what are the institutions which he wished it had reformed?§ I profess I do not know.

To resist *oppression*, which means something contrary to duty and moral obligation in the oppressor, and destructive to rights in the oppressed, is a law of our nature, and requires no precedent to give

* Comment. i. 161.

† Vide Appendix, No. V.

‡ Vind. Gall.

§ Did he mean the kingly government, or the House of Lords, or to give universal suffrage?

us power to act upon it. This, then, was established at the birth of man, and surely did not take its origin from the revolution.*

What else did it establish *by way of precedent*?

Mackintosh answers, the right of the people to *revoke* abused power.

This is a very general sweeping proposition, which ought to be far more distinctly explained before we can even understand, much more assent to it. If it mean a right to resist an invasion of our legal security, it is not only admitted, but, as has been observed, asserted by the law of nature, not merely of the Revolution; but if it mean to resume a power actually ever enjoyed and actually delegated to another, we dispute the fact.

Power, to be *revoked*, must have been enjoyed; and the people of England never did enjoy this power, or delegate it in form to another. It is a fancy embodied in argument, and, as we have before observed, by implication, for the better illustration of the science of government; an imaginary case, which, as a fact, never existed.

The word *revoke*, therefore, is improper, and the doctrine founded upon it, *as derived from the Revolution*, still more so. The people of England neither *revoked*, nor *resumed*, their political power: they *used* their right of self-defence when attacked, given by nature to all human and all other kind.

* For the eloquent proof of this, see Mackintosh himself, in the Vind. Gall.

But the consequence of this revocation in the jurist's mind is still more indefensible.

The precedent, says he, gave them a right to "frame the government, and bestow the crown;" in this, defending the assertion of Price, that it had established a right "to choose our own governors, to cashier them for their misconduct, and frame a government for ourselves;" adding, that the House of Hanover owes the crown to the choice of the people, that is, that the people might with equal right have chosen any other family, or even Jeffries or Kirk, to be their king.

These memorable positions are what drew forth the as memorable answers of Burke; and it would be gross affectation of incredulity to say that these doctrines have not been held by many reasonable and well-disposed persons since the Revolution, if they were not first started and established by that event.

But are they true? That is the question.

That the House of Hanover owes the crown to the Act of Settlement, made by King, Lords, and Commons, and that it would be a poor subterfuge to deny that what that act did, was, *in part*, done by the representatives of the people, I will not be the person to hold; but to say that it was given by *election* — such election as the theories which have been combated suppose, namely, a meeting of all the people, returned to a state of nature, every individual his own sovereign, and about to delegate that sovereignty to a particular man or family upon certain conditions, or even an election by their representatives, so free from

all duty or guiding principle, that their choice could have been uncertain or indifferent, — this I take leave to deny.

For was it more than what the parliament had often done before to meet unexpected emergencies, in regard to the throne, when either really or virtually vacant, or the succession altered by a contingency, natural or forced? Did the House of Hanover succeed by election more than Henry IV., when it was simply voted that “the inheritance of the crown and realms of England and France, in all other the king’s dominions, *shall be set and remain* in the person of our sovereign lord the king, and in the heirs of his body issuing” — remainder to Prince Henry and his heirs, then to Lord Thomas, Lord John, and Lord Humphrey, his brothers, and their issue?

Now, as Henry IV. had no legal title of himself, any more than King William or George I., and the lawful heirs of the family of Marche were here set aside, so William and George, though, like Henry, they were in the succession, not being *immediate* heirs, that succession was altered in their favour, to the exclusion of those who were, namely, Anne and the House of Savoy. Yet will any man alive, or did any one who ever lived, suppose, much less promulge, that Henry IV. came in by election of the people, or that the people might, if they had pleased, and had not been controlled by him on that occasion, have placed any one of themselves (a Percy, for instance) on the throne? Such is the opinion of Mackintosh, who asserts, that, at the Revolution, the principle that

justified the elevation of William, and the preference of the House of Hanover, would have vindicated the election of Jeffries or Kirk.*

The respect we owe to Sir James alone makes us patient in refuting this most mistaken position.

The principle was the same on which, in various periods of our history, the parliament regulated, that is, *altered, the course of succession*, as to individuals of the same royal family, but never supposed, or held (or any one for them), that in that they could, or did, set the reigning family aside, and elect a new one, or abolish monarchy altogether.

To you, I need not dwell upon these alterations; but those who follow these strange tenets of Sir James and his wild associates in doctrine, would do well to consider how many of them there have been. How they were produced is not the question: the simple point is to show that parliament has often so interfered, without the most remote notion in the Mackintoshes or Prices of those days, that the power of altering the succession as to the individual, proceeded upon the *right* to elect a new family, or a new government altogether.

In Henry VII.’s case, he certainly had no right to be considered even in the line of succession; because, though he descended from the House of Lancaster, it was through a stock that was illegitimate. But the claim of the descent, and the assertion of it, were al-

* Vind. Gall.

lowed by the world, from the detestation born to Richard. Henry was treated and estimated as the true representative of John of Gaunt, and, as such, was able to procure that power and following which overturned the tyrant. *No other man in the nation* was looked to, or could have done it. He suffered himself to be crowned by his army* on the field; and the parliament voted, as they did in the case of Henry IV., "*that the inheritance of the crown should rest, remain, and abide in him and the heirs of his body;*" but will Sir James for a moment pretend that all this was upon the principle of a free legalised election by the people, who might, *by the law*, have elected Lord Stanley, or any other chief they had pleased, instead of him?

In the reign of his son, the king and parliament were most busy with the succession. They set aside his daughter Mary in favour of Elizabeth; they set aside Elizabeth in favour of the issue by Jane Seymour; they then restored both Mary and Elizabeth; and they even vested in the king, on failure of children, the power of naming his successor. In strictness, therefore, had the conjuncture arisen, he might have exercised it to the exclusion of the Scottish princes, who were the undoubted natural heirs.

But would even this have amounted to the claim

* It is said that Sir William Stanley, after the battle of Bosworth, having found a crown which Richard used to wear, placed it upon his head, and saluted him king.

contended for in the people to dispose of the throne absolutely as they pleased, or to set aside the reigning dynasty? Certainly not; if only because *the king himself was a party to all these alterations*, which plainly deprives the people of any *exclusive* pretension to such a right.

This also applies to the preference of the House of Hanover itself; for the warmest sticklers for an election by the people cannot and do not pretend that the same power that chose King William, placed King George in the remainder. The convention did the first, but the second was effected by an act of parliament.

And this is a complete answer to what, with submission, is a fallacy of a noble author and secretary of state—Lord John Russell. "The hereditary succession of the crown," says this statesman, "was in their eyes (the Whigs) a rule for the benefit of the people, and not a dispensation of Providence for the advantage of a single family. If at any time, therefore, the observance of the rule became dangerous to the welfare of the community*, the *legislature* was, in their opinion, competent to consider whether that danger was greater than the inconvenience of deviating from the established course."†

Were this all, who would doubt it, who profess that the *legislature* could not remedy all evils or in-

* Who is to decide that question?

† Life of Lord Russell, i. 186.

conveniences? But if it is meant that by this word Legislature, the *people resumed* their supposed and asserted inalienable sovereignty, the consequence does not flow from the premises. For the *Legislature*, though compounded of the people, are not the people alone, as the term is here meant; it is compounded of king and hereditary senators, as well as people: these, together, are omnipotent; asunder, nothing. If, therefore, Lord John, by Legislature, means the people alone, it is not the fact.

Fortified by this junction with the king, the legislature becomes, indeed, what the lawyers hold it to be, omnipotent; and as they once so altered the constitution, as to give the proclamations of Henry VIII. the power of laws, so, I apprehend, we must admit that, in *concurrence with the king*, they might overturn the monarchy and *enact* a republic. But neither would this give the people *alone* any such right, still less that of deposing, or excluding at pleasure, the whole of the reigning family.

The naming the power of exclusion brings us to the famous question as to James, when Duke of York.

If any thing could countenance the supposed right to cashier our kings for misconduct, and choose others, it would be this attempt to cashier the next heir to the crown. Had it been carried, the supporters of Price and Mackintosh might have perhaps resolved it into a precedent of this unconstitutional pretension.*

* Unconstitutional, if attempted by any thing short of the whole legislative power.

Yet, not to mention again *that the king must have been a party to this*, what would it have amounted to more than those other instances of a regulation of the succession in members of the same family? not to any precedent of a power in the people to create a new government, or *elect* a new governor.

The contest about the exclusion was, as you know, conducted with more heat and violence by the Commons, than any question of our history. The question as to James as king, was tranquil in comparison with that regarding him as heir; yet no one talked of the inherent power of the people to cashier governors and elect new ones. Sir James, indeed, asks rather triumphantly, whether Price was not right as to a succession by *choice* in the Hanoverian family? "Dr. Price," says he, "had asserted (I presume, *without fear of contradiction*) that the House of Hanover owes the crown of England to the *choice of the people*."*

I venture to say not; at least, not in the full sense that both Price and Mackintosh assert it, as arising from the supposed *new* principles established at the Revolution. Both of them forget that an act of parliament had regularly passed by *King, Lords, and Commons*, and not by the sole voice of the people, (I mean the Bill of Rights,) by which all Roman Catholics were disabled from succeeding to the throne. This at once incapacitated the whole House of Savoy, and brought forward the *next* protestant heir, who

* Vind. Gall.

by law might have asserted his claim; and this heir, as we all know, was George the First. But even had no disabilities been enacted, it cannot too often be noticed, that the necessary concurrence of the *Sovereign* in the Act of Settlement, at once destroys all notion of an *Election* by the people, whether by themselves individually, or through their representatives collectively.

Can any thing, therefore, be more wild, more untrue, or more unsupported, than this triumphant question of Sir James?

Both of these jurists (if Price had any pretension to be a jurist) might quite as well have supported the impudent and infamous falsehood of the murderers of Charles, who told him he was an elective prince, elected by his people, and accountable to them for his conduct; — upon which principle they cut off his head. Neither of these authors, indeed, *expressly* held this, and Sir James, at least, would probably have hesitated in doing so; but I profess I can see no difference between these assertions of the regicides, and the principles laid down in the works I am canvassing. It is true, the family of Hanover were called to the throne by an act of parliament; but what was this but to make assurance doubly sure, and prevent not only all cavil as to what, though clear, might have been started by the family of Savoy, but to give the finishing blow to the hopes of the family of Stuart. I repeat that the Bill of Rights, having incapacitated the King of Sar-

dinia, the right of the Electress Sophia established itself at once, and would have prevailed without the necessity for any confirmatory act to give it existence; although such act, by doing away all difficulties, and smoothing the way to the throne, was wise, expedient, and politic.

This argument, founded upon the previous disabilities of all Roman Catholics, created by the known sovereign power of England, is, I think, a complete answer to all the warm declamation, as well as the nice subtleties of Sir James, in regard to what he calls the *choice* of the House of Hanover. Had Victor Amadeus been a protestant as well as King George, I have little, indeed no, doubt that the *choice*, as it is called, would have fallen upon *him* as nearer to the throne.*

But the Convention, by the *election* of William, set *aside* the claims not only of the son of James, but of his daughters Mary and Anne.†

This is a great inaccuracy, and not what one

* He was grandson of Henrietta Duchess of Orleans, daughter of Charles I.; George, grandson of the Queen of Bohemia, daughter of James I., a generation further off. See a remarkable passage of Lord Cowper's speech, in passing sentence on the rebel lords, 1715, wherein he said the king (Geo. I.) succeeded to the crown, as it was declared by the law some years before it was expressly limited to the House of Hanover. What bears still more upon the point, one reason for the Commons not joining the Lords immediately in William's reign, in selecting the House of Hanover, was that the nearer but disabled heirs, by renouncing the Roman Catholic religion, might remove their disabilities.

† Vind. Gall.

would expect from an historian. It is as known, as remarkable, that the parliament *took no notice* of the existence of a son, whose very birth was questioned with different degrees of sincerity by most of the actors on that busy scene. The claims of the son, therefore, could not be set aside; for the heroes of the Revolution, bold and enthusiastic as they are supposed to have been in asserting the people's right of election, had not the courage to make them a question: — like the chivalrous knight of La Mancha, they were prudently satisfied with the helmet, without putting its strength to the trial. Then as to Mary, far from being passed over, her title was expressly acknowledged, and she was made sovereign in her own right, in conjunction with her husband; though the latter was, for good reason, to exercise the administration of the sovereignty. Her children too, if she had any, were to succeed; and though childless by William, had she survived him, married again, and had issue, that issue, I apprehend, would incontestably have succeeded. She, therefore, was not set aside.

It is true, in the event of William's surviving his wife (which happened), he was preferred to Anne; but there is a remarkable and, I think, a most important circumstance, which ought not to have been passed by by Sir James, that his children by any other wife than Mary were postponed to her. This shows exactly how deeply impressed the Parliament were with the necessity of preserving the line of succession

in every thing but what the most absolute necessity required.

Let us even suppose for a moment that Anne, from infirmity of mind or body, (she was not very strong in either,) had been unequal to the duties of the sovereignty, and that William was, on that account, elected for life, to the exclusion of the progeny of Anne, whose right might have been protected by a regency; would that have immediately thrown down the hereditary monarchy, and let in the sovereignty of the people, as if it were elective? Would it not rather have been one of those regulations or alterations in regard to individuals in the line of succession, which we have just been noticing?

I am quite aware of the passage in Blackstone which gives colour to the supposition, that, from the finding of the Convention parliament that the throne was vacant, the whole royal family ceased to be royal, and was only renovated by positive enactments. If with various deviations, therefore, the family were replaced on the throne, it might be argued that it was only from *prudential* regard to public feeling, and not from absolute legal obligation.

"*Perhaps,*" says the learned commentator, "upon the principles before established, the Convention might, *if they pleased,* have vested the regal dignity in a family entirely new, and strangers to the royal blood; but they were too well acquainted with the benefits of hereditary succession, and the influence which it has by custom over the minds of the

people to depart any farther from the ancient line, than, temporary necessity and self-preservation required."*

This is a most important dictum; and, were it more *positively* laid down, than with the hypothetical and cautious "PERHAPS," with which the sentence opens, would be a grave authority for the position of Sir James. He would then have had the support of a very enlightened man, when he said "the choice (of William) was, like every other choice, to be guided by views of policy and prudence, but it was choice still†;" and he might also have felt justified, or at least countenanced, in so boldly pronouncing that the elevation of William and the preference of the House of Hanover, to the exclusion of nearer heirs, might have vindicated the election of Jeffries or Kirk.

But the very doubtful and doubting word with which so momentous a doctrine is prefaced by this otherwise cautious judge, throws all, if not into confusion, at least into such uncertainty, as to deprive a man of all right to plead it as a direct authority.

It is certainly true, even without a *perhaps*, that the Convention, having all power, and with their opponents all at their feet, might, *if they had pleased*, have vested the regal dignity in a family entirely new; and the Judge might have gone farther, and

* Comment. i. 214.

† Vind. Gall.

added, or might have converted the monarchy into a republic or any other form of government. But would the *power* of doing this have given them either a legal or moral right to it? Would it not all have been reducible to the right of the strongest, as formerly alluded to?

Burke himself admits the power (supported, says he, by force and opportunity), but, as may be supposed, gives it but little or no weight in a discussion of principles.

The true way of estimating the real extent of the precedent, is to inquire what were the opinions entertained, what the principles actually laid down, by the leaders and actors in the story. They at least knew their own meaning.

If ever there was an opportunity of asserting the supposed right; if duty, policy, and fairness called for the most explicit declarations upon it, it would have been in the Bill of Rights, in which the whole of the new constitution was founded. That Bill was framed by the wisest statesmen and lawyers of their time, and what is more, by Whig (Lord Somers at their head) at least as virtuous, and as much attached to rational liberty, though perhaps not so wild as those of the present day. Yet, though they intensely scanned the whole subject of the people's rights, and the principles on which the Revolution was founded, no mention of such a pretension as is claimed for them by our two political Apostles, is made, either in the debates, or in that ample Bill in

which all the other privileges which had been fought for were so amply, and perspicuously laid down.

Is it on this account that the Continuator of Mackintosh, in a fit of virtuous spleen, and admiration of the superior virtue of *modern whiggery*, denounces the Whigs even of the Revolution, in language such as the following: "The real secret, if it be any longer a secret, is, that the Whigs of 1688 *had no notion of freedom* beyond their sect or party; that with liberty on their lips, monopoly and persecution were in their hearts."

In a virtuous strain of indignation also against the dethroned family, he bespatters the whole English nation. "Their vigour, and virtue, and character," says he, "had dwindled, *from the restoration of the Stuarts*. A degenerate race succeeded the men of the *Commonwealth*.—The aristocracy seem to have been born without that sense which is supposed to be their peculiar distinction—a sense of honour." *

To what, then, in the minds of our Professors of modern whiggery, are all our deliverers, the Whigs of the Revolution, reduced? Instead of patriots, they were all mean, selfish jobbers. Vigour and virtue had fled from the seven heroes (as we were taught to think them), who, at the risk of their heads, invited William to aid their oppressed country; and the cowardly names of Shrewsbury, Devonshire, Russell, Sydney, and also of the enlightened

* Hist. Rev. ii. 149. 224.

Somers, sink into dirt before the sturdy vigour and virtue of the disinterested Commonwealth's men, Cromwell, Ireton, Vane, Martin, and Hazelrigg. Is it possible that this can find place in a history of the Revolution.

To return to our point, let us consider Mr. Hallam's view of it. "It could not be held," he observes, "without breaking up all the foundations of our polity, that the monarchy *emanated from the parliament, or even from the people*. But by the Revolution, and the Act of Settlement, the rights of the actual monarch of the reigning family were made to emanate from the parliament and the people. Hence," he adds, "the rights of the House of Brunswick can only be deduced from the Convention of 1688." *

In this just remark of a gentleman, any thing but an opposer of the rights of the people, or a favourer of despotic power, I recognise nothing but my own doctrine. The foundations of our polity *would* be broken up, if the monarchy emanated from the parliament, or even from the people; and the actual monarch of the reigning family *does* derive his right ultimately, by what was done at the Revolution. For it was the Revolution that removed, not the family, but the person of James and his son, and placed others *of that family* in his stead on the throne. It was the Revolution that *incapacitated Roman Catholics from succeeding*, and hence called in^{to} action the claims of the House of Brunswick,

* Const. Hist. iii. 345.

confirmed and sanctioned, though not, as I hold, *created*, by the Act of Settlement. I see nothing, therefore, in this opinion of Mr. Hallam, either in support of Blackstone's "Perhaps," or Sir James's absolute assertion of the power to elect "a family entirely new, and strangers to the royal blood." In truth, as I have before remarked, what seems decisive of the case is this total absence of evidence, on the part of the most republican theorists (old Commonwealth's men, like Maynard), and still more on the part of the rational but determined Whigs, like Somers, that there was any pretension in their minds to a right of election out of the reigning family. On the contrary, as we shall presently see, these very men disclaimed such a right, when reproached, as they were in debate, with the tendency of their measures to produce it. To the particulars of these debates in the Convention we shall hereafter come; meantime it is right to bear in mind that not one of the Revolutionists broached this modern doctrine of unlimited choice.

What do the votes, what does the address to William and Mary in the Bill of Rights, say? Do they talk of a *new* election by the people? or of their power to choose a new family, or new frame the government? No! even the vote of the Scotch Convention, bold as it is, and not only not warranted by law, but contrary to law, in saying that the king, who could legally do no wrong, had "forefaulted his crown;" not even this vote pretended to the right of

the nation to extinguish the whole royal family, and choose a new one.

The English vote did still less; for it ventured not, it did not even nibble at, the doctrine of forfeiture, nor dreamed of *cashiering*; it only found the throne vacant in consequence of James's conduct, and, as might naturally be expected, filled it up, in the same manner as it would do again if all heirs failed or were incapacitated. Nor is it any argument against this, that the vacancy was fraudulent, or found by a forced construction, or contrary to the fact (of which presently). In estimating the precedent recorded, we cannot travel out of the record; the vacancy is there stated as true, and, whether true or false, so we must take it. This is the amount of the precedent, and no more. To this, and this alone, are we bound; nor can any other use be made of it, than that, in the same circumstances,—that is, if the throne were again found vacant,—the same remedy would be applied. It is indeed true, that the vote of the Convention added some theoretic positions, such as that there was a compact between the king and the people, which James had broken: that, in addition to this, he had endeavoured to subvert the fundamental laws; and by this, and withdrawing from the realm, he had abdicated the throne, which was thereby vacant. But this, though it adds the history of the case, does not alter it. The case remains simply the same, in regard to the fact of the vacancy, and the power as well as the necessity to fill it up. How it

was occasioned, is of no consequence to the argument founded upon it; but it is quite sufficient for the point before us, that, though the whole proceeding of the Convention showed how much they were imbued with the spirit of opposition to arbitrary power, and their own right to supply the vacancy of the throne, by stopping suddenly short upon the question of election, and not even glancing at Blackstone's unproved supposition, they showed that they neither did, nor could, broach such a pretension.

Yet, with all this clearly before him, a noble person of the present day, to whom we cannot refuse the attribute of much reflection, does not hesitate to tell us, that "the peculiar distinction of the Revolution is not, as some have supposed, to have *established* the right to *depose* the king and alter the succession, — a principle often before asserted in our history, — but to have brought into easy and undisturbed practice" our ancient rights and liberties."*

Is not this admirable? And can you ever be thankful enough for so great a boon, of which you possibly (myself certainly) were in total ignorance, till this noble writer bestowed it upon us? For according to him, at least, nothing is now more easy or regular than to depose a king of England, which, indeed, was always a part of the Constitution; and the Revolution did nothing new, in exercising this right. Mr. Booth, indeed, had been before him, who dis-

* Lord John Russell. Life of Lord Russell.

covered, that before the Conquest the people set up and pulled down as they saw cause.*

We only wonder that the noble Lord stopped here, and did not tell us, as there were precedents for murdering our kings as well as deposing them, and that the one fatality generally accompanied the other, as in the cases of Edward II., Richard II., Henry VI., &c., that it was also our undoubted right to make away with them in prison, according to our ancient and constitutional privileges.†

So much for the votes.

Then, as to the address to their new sovereigns, (elected indeed, but out of the *old* family, as a necessary condition to their power,) did they hint even at the right of the people to look at any other family?

No! they thanked God, not that they had an opportunity of exercising their right of sovereignty, thus devolved upon them, but that he had preserved William and Mary to reign over them *on the throne of their ancestors*.

Thus, then, according to the cogent observation of Burke, if the right of the people to elect were admitted before, it was now taken from them; and

* Debate on Exclusion Bill.

† Lord John Russell. Life of Lord R. i. 164. Will Lord John pardon the liberty of telling him, that precedent and right are not the same things? If they were, all the crimes human nature ever committed might be justified.

hereditary succession, which had before existed by common law, was now enacted by statute.

Surely one would suppose, that, if the Revolution had developed this new power of the people, something would have been said upon it when they proceeded to put it in practice. But not a word was ventured to that effect; and they quietly proceeded to regulate the succession upon the emergency, as their ancestors had often done before, selecting what was most fit to meet the case, but never, for a moment, thinking or pretending that the *hereditary* monarchy was dissolved and rebuilt. Hence Burke's observation is just, that the wisdom of the nation was totally adverse to turning a *case of necessity* into a rule of law; and, as to the preference of William, it was also necessity, not *choice*; for, without him, we could not have avoided a bloody war, which seems to me to be the true account, and to put an end to all the fine-spun notions in respect to deviations being rules instead of exceptions.*

If this be so, (and I see not how it can be refuted,) we may count little upon the subtleties hazarded by Sir James to get rid of it. He attempts to reconcile what he owns is a "repugnance between the *conduct* and the *language* of the Revolutionists. Their con-

* It would swell this treatise beyond its intended limits to set forth at large the debates upon this question of *election*, to which the Tories expressly warned the Whigs that their proposed measures would lead; all which the Whigs flatly denied.

duct," says he, "was manly and systematic, their language conciliating and equivocal."*

How manliness and equivocation can be reconciled, I don't know; but he goes on, "they kept measures with prejudice *which they deemed necessary to the order of society*. They imposed on the grossness of the popular understanding, *by a sort of compromise between the constitution and the abdicated family*."†

So, then, all these great and high tenets of the power and sovereignty of the people, and the actual proof of their exercise, demonstrated to the minds of every body then and ever afterwards, were, after all, *kept secret*! They passed muster *in the dark*, were never promulged or asserted, but silently pondered, reserved in the cells of the brain of political philosophers for a hundred years, and then brought out, like silver cleared of dross, fresh from the mint.

Verily, these discoveries of Sir James, that our ancestors *equivocated* us into rights, and *compromised* us into a sovereignty, which we never thought of at the time, this imposing upon the grossness of the popular understanding‡, from the fear that the people would otherwise *reject* the sovereignty offered them, are as beneficial as they are amazing; and we owe him the greater thanks for having fished up, after a century's immersion, tenets, and principles, and

* Vind. Gall.

† Ibid.

‡ To continue the hereditary line, was, according to Sir James, to impose on the grossness of the popular understanding.

designs, and stratagems, from the minds of statesmen and legislators, which they had themselves, it seems, for the sake of success, *purposely* concealed.

And this is the way in which doctrines the most important and vital to the security of our constitution, and the well-being of our society, are said to have originated: their birth was kept secret, nay, hid from the knowledge of those most concerned in their promulgation, yet whose acts are supposed to have received their chief impetus from a sense of their truth. With submission, however, the silence of our deliverers as to the existence of a prince of Wales is completely decisive of our position, that they never thought, but were the reverse of thinking, of establishing the doctrine we are contesting, namely, the right of the nation to set aside a whole family for the fault of the sovereign. Had this been held, why did they not manfully declare it, by acknowledging the son of James as his natural heir, and cutting him off with his father, by virtue of their inherent inalienable power? Instead of this, what have we but mean subterfuges to get rid of a question which they were afraid to encounter, but which, perhaps, they prophetically consoled themselves with thinking would be demonstrated for them a hundred years afterwards by Price and Mackintosh.

But the best is, that Sir James himself immediately refutes his whole supposition by showing its absurdity. In particular, he well exposes the inconsistency of the position of an *election*, with the thanks to heaven

that the new sovereigns had been preserved to sit on *the throne of their ancestors*. This, says he, either referred to their descent, which was *frivolous*, or insinuated their hereditary right, which was *false*. Need I remark, that this mode of putting it begs the whole question?

The same inconsistency, he remarks, attends the choice of the family of Brunswick, *because* of their descent from James I. If, says he, this (that is, the hereditary right,) were the sole reason, the right was in Victor Amadeus; and he then asks, triumphantly, what answers Burke or Lord Somers could make to these charges?*

According to us, the answer has already been given. The Bill of Rights had incapacitated all Roman Catholics, the House of Brunswick were the next protestant heirs, and as there was no claim at the time to this new right, (only lately discovered,) of a power to frame a new government, and new ruling families, but the intention was merely to fill up a vacant throne out of the old one, so far from inconsistency there is the most perfect conformity to the proposition we have laid down, the election of an individual, but no invasion of family rights; William preferred before Anne, but Anne preserved; Hanover before Savoy, because Savoy disabled.

Sir James, however, says, and not unfairly for one who holds the argument he does, that "it is futile to

* Vind. Gall.

urge that the convention deviated *very slenderly* from the order of the succession. The deviation was, indeed, slight, but it established the principle, the *right to deviate*."

Yes, the right to deviate from the general rule as to individuals in the line of succession, but not to depart altogether from the constitution, not from the choice of a particular family enjoying an inheritance. If this were so, the precedents of William Rufus, Henry I., and Stephen, of Henry IV., Richard III., and Henry VII., all of whom were preferred to the next heir, (besides the fluctuations between Mary and Elizabeth,) would deprive the Revolution of all the honour of this new principle of election. I have already asked, if the precedents ever did so in the doctrines of any constitutional lawyer before the Revolution.

Sir James, proceeding in his defence of Price's notion of cashiering, next asks, whether the deposition of King James, for the abuse of his powers, does not *establish a principle* in favour of the like deposition when the like abuse should again recur?

Here, for *principle* we should read *precedent*, or else both are confounded, and all wickedness (for which there is generally precedent enough) may be defended upon a *principle*.

That the Revolution formed a precedent, nobody can doubt, any more than that the deposition and murder of Edward II., Richard II., and Charles I., formed precedents. Will they, on that account,

furnish a *principle*, that all other princes in the same circumstances may be deposed and murdered?

We see, then, how dangerous it is to get entangled in a labyrinth of difficulty, by endeavouring to reduce cases of unforeseen and sudden emergency to the forms of law. The amount of the precedent of the Revolution is what did not require the authority of that or any precedent to justify it—the right of self-defence when attacked. This, and no more.

Even Mackintosh himself admits that the "*misconduct*" stated by Price, as warranting our power to cashier our kings, must, in future, amount to "the precise species of misconduct committed by James; and he is angry with Burke for fixing Price to so feeble and loose a term as misconduct.

But Burke did not class petty faults under the misconduct predicated by Price; and if nothing short of James's crimes amounts, in Mackintosh's understanding of it, to the meaning of misconduct, how does he account for his own assertion, that "*of the justice* of a war against Charles II. (meaning an insurrection) no man can doubt, who approves that revolution on which the laws and liberties of England now stand.*

What, then, was Charles as great a criminal against the laws as James? This, I own, I am to learn. He was a bad man, and despicable prince:

* Hist. Rev. ii. 90.

he wished to govern without parliaments; his connection with France was not only impolitic but infamous; the second Dutch war could not be defended; the shutting up the exchequer was dishonest; and many proclamations in the year 1672, such as those concerning martial law, and various others, savoured of arbitrary power; but, above all, the declaration of indulgence, so pleasing to the Catholics and Dissenters, so terrific to the Church, filled the latter with alarm. But, exclusive that for all these there were legal remedies by the impeachment of his profligate ministers (Shaftesbury, that child of rebellion, among them), would these have given a right of war in his subjects against him? If so, what becomes of the explanatory assertion, that kings must be precisely in the same situation with James to justify the same punishment of them by their subjects? But if we grant the right of war against Charles, where is the reign in which acts of impolicy or power might not, with very little colouring, be made to amount to a legitimate cause of insurrection? The question of general warrants, the late poor laws, or the marriage act, so much complained of at the time, or the excise (such an invasion of liberty, though imposed by law,) — might not each of these, if Sir James or Price be right, have been a call upon the subject to arm against the throne? There was immorality enough in Charles; but, as there was no personal oppression, are we not warranted in demanding of this our instructor in the principles of resistance, to point out

the special case or cases of tyranny and misconduct which would justify the right of war against him, which, he says, was so undoubted? We should, then, force him from his stronghold of generalities, and be able, at least, to understand him.

I will, however, give him one. The greatest breach of the law, though, perhaps, not the greatest instance of misconduct by Charles, was in governing without parliaments spite of the triennial bill. This, had there been a chance of success from union or numbers, or the aid of the Prince of Orange, as in the time of James, might have justified an armed rising to force him to obey the law of the constitution. But here was a specific attack upon the rights of the nation, which might have been resisted by the law of self-defence, without any recourse to refinements respecting a dormant sovereignty of the people, which none of them could understand.

On the other hand, we have seen the misconduct of the popish plot parliament, which, if the invasion of *moral* rights is to justify war, would have authorised a thousand revolts against *them*; and the rather, because parliaments have no ministers to be responsible for them; but this it does not suit the advocate of the people to notice.

As it is, if, as Sir James requires, the misconduct cited by Price is to tally with the precise misconduct of James, it at once destroys the axiom as a *general principle* authorising us to cashier our rulers. Yet, as a general principle, and with no explanation, it is

laid down by the political divine, as if it were the positive law of the Constitution, not merely a moral right.

This, however, is confuted ably, but strangely, by Sir James himself; strangely, because he is fully a participator in the same doctrine.

"No man," he says, "can deduce a *precedent of law* from the Revolution; for law cannot exist in the dissolution of government; a precedent of *reason* and *justice* can only be established on it; and, perhaps, the friends of freedom merit the misrepresentation with which they have been opposed, for trusting their cause to such *frail* and *frivolous* auxiliaries, and for seeking in the *profligate practices of men* what is to be found in the sacred rights of nature."

Why, then, I have all this time been mistaking the eloquent advocate for the Revolution, particularly where he asserted, that the deposition of a king for the abuse of his power *established* a principle in favour of the like deposition when the like abuses should again recur; all which, he says, was done by the Revolution.

Now, I suppose, I need not observe, that to *establish* is to form or create something new — something that had not existed before. We certainly should not say that we had *established* a monarchy in a country where a hundred kings had reigned. The Revolution, therefore, according to Sir James, having *created* this principle, was lauded with the eloquence due.

Who, then, could expect that its advocate should,

almost in the next sentence, denounce it as "a frail and frivolous auxiliary," or that it arose from the profligate practices of men, instead of being a sacred right of nature."

This is, indeed, wild work, and a total contradiction; for, if a sacred right of nature, the Revolution did not *establish* it: it was known to every born man; and the doctor has really very much to complain of in Sir James for having, by the discovery, reduced his all-conquering and resistless case to a frail and frivolous auxiliary.

SECTION IV.

CHARACTER OF THE REVOLUTION.

HITHERTO we have been occupied with canvassing principles, prompted, as is said, by the facts of the history; and, were those facts all as represented, my task would be over.

But the object yet wants much for its completion; for though, as to the event, there can be no difference of opinion, as to the character and colour of the facts that led to it there may be a great deal.

The general impression from the history, as we love to believe it ourselves, and to teach it to our children, is, that James, being a tyrant, we were driven not merely to oppose him in self-defence, but, that using the rights of sovereignty vested by nature in a great, free, and enlightened people, the nation rose as a man, in judgment upon his acts; and, finding him guilty, deprived him of the power he had abused; that they, therefore, withdrew an allegiance of which he was unworthy, and filled his place with one better deserving their confidence; that all this was done

upon principles well understood, gravely discussed, and bravely as well as justly enforced, by a set of heroes and sages, whose patriotism, courage, and honourable dedication of themselves deserve the admiration and everlasting gratitude of posterity, and the whole world, to whom they exhibited the august and magnificent spectacle of a nation of freemen calling to account, and punishing by forfeiture, its sovereign magistrate for a breach of trust.

Farther, it appears that, being too weak to effect this of themselves, they called in the aid of a great and glorious military deliverer, who, out of *pure love of justice, and a disinterested* attachment to their liberties, suppressed all inferior calls upon him of duty and affection, as the son-in-law, friend, and ally of King James, and sacrificed every private feeling to this holy object. On this *national* invitation, the deliverer cheerfully hazarded his life and the resources of his country, for no ambition of his own, but purely to restore an oppressed people to their rights and independence, who used them, when recovered, uninfluenced by any fear or other motive than their own will, to place him on the throne which the tyrant had forfeited. Finally, that all this was done without tumult, or the exertion of any force, but by the people themselves, through their representatives in parliament assembled, and, therefore, by their own free and unbiassed voice;—a noble, and even stupendous, example of the most stupendous, as well as beautiful, theory of natural rights which the world ever saw.

Such is the account of this great event, which, as was before observed, we endeavoured to believe ourselves, and love to teach to our children.

Now I do not say the picture is *altogether* false; the result, happily for us, *seems* to warrant its correctness.

How far it is really just, is a question as momentous as it is interesting. For, if we examine its details with critical strictness, are we sure we shall find in it that exhibition of patriotism or public virtue in the actors, or even of disinterested generosity in the deliverer himself, which we fondly, and not unnaturally, wish to believe?

Upon dissecting the character of the event itself, and more particularly of its authors, what shall we say, if we find that the nation at large had at first very little to do with it, that it was mainly promoted by men who intrigued at least as much for their own benefit as that of the people, (the usual character of common-place patriots,) and that William himself fomented the discontents, which were, in the end, to aggrandize him, with a view to his personal ambition; and a passion of far more consequence to him than the love of liberty which he professed?

The passion I mean was to liberate Europe, not England, by humbling France; and that so stupendous an enterprise as he undertook should be only secondary in this pursuit, enhances our ideas of the vastness of his genius, and the grandeur of his mind.

Let us (for must we not) add to this, that even our darling notion that our love of liberty, and the defence of an invaded constitution, were the paramount and deciding causes of our resistance, is not to be asserted without great qualifications. Therefore, so far our merit, as Liberty's favourite sons, is not so unmixed.

You will see, at once, that I mean how great a share religion had in every feeling which, on this occasion, prompted men to action. Had the love of Protestantism and hatred of Popery not been interwoven in the nature of almost every man concerned in the Revolution, had the tyranny of James not meddled with the religious faith of his subjects, for one, I feel warranted in thinking our far-famed Revolution would never have existed.

It is very certain, I think, that, but for their religious jealousies, the troops at Hounslow would not have grounded their arms, and, still more, that the bishops would never have dreamt of petitioning against a declaration of the king.

We know how much the love of liberty, in the great civil war against Charles, was sullied and stained by the grossest and most disgusting fanaticism, amounting often to blasphemy.

Without this fanaticism, is it unfair to question whether Cromwell, or Vane, or Harrison, could have effected what they did? Is it less so to make the same question as to the full motives of our revolutionists?

Even Marlborough professed that, though he pretended not to be a saint, he was able to die a martyr for his creed. Would it be a great stretch of incredulity to doubt whether he or another military enemy of popery, the enlightened Kirk, felt such soreness at the invasion of their civil rights as to draw the sword against the master whom they had served, and whose money they had pocketed so long, without any protestation against it?

We must not, therefore, look at the Revolution with a pure unmixed Roman spirit, nor think that love of country, and an enlightened understanding of laws, alone incited our ancestors to this great undertaking. Neither, on the other hand, can I believe, with Lord John Russell, that James the first embraced the Roman Catholic faith because he found it most congenial to his own love of arbitrary power. Of that love there is too abundant proof, — for no one can deny that “Cæsar was ambitious.” Any more than that “grievously hath Cæsar answered it;” but the merits or demerits of his opponents is an open question. We pass, therefore, the sins of the king, as too glaring to be doubted, and also the question as to his prudence or courage in meeting his difficulties; but not so can we pass the conduct of those subjects who advised or betrayed him, any more than the moral conduct of his son-in-law, in maintaining, for a great length of time, a correspondence with those subjects for the purpose of revolt.

Yet, during all this time, William was making the strongest protestations of duty and attachment to his father-in-law, whom he was thus preparing to dethrone. At the same time, in order to show the spirit in which a modern Whig can write (for Mackintosh is called by his Continuator *emphatically* a Whig of the Revolution,) and, therefore, to appreciate the impartiality of his judgment, I cannot help transcribing a few passages in regard to the king and the prince.

In his letters to William, James was brief and dry, nor can we be surprised at it. “This betrayed the violence he did to his nature in writing them.” I know not how it does so: but the Continuator adds that James “combined with his harsh character that common art in the education of princes, and exercise of kingcraft, dissimulation.”*

Well, was the prince (though in him, being only a prince, and at the same time a deliverer, there could be no *kingcraft*,) exempt in a greater or in any degree from this crime?

See what the Continuator himself is forced to say of him, in regard to his communications with the disaffected subjects of James. “Affecting towards him, with an air of patient tranquillity, the deference and duty of a son, he gained over the subjects, sapped the throne, and, finally, made himself supreme arbiter

* Cont. of Hist. Rev. ii. 106.

of the fate of his father-in-law, *under the pretence of zeal for a church, and affection for a nation, to neither of which he belonged.*"

Again, in a letter from Fagel to Stuart, an agent of the king, the pensionary says, "their highnesses have ever paid a most profound duty to his majesty, which they will always continue to do, for they consider themselves bound to it both by the laws of God and man." This was after concert had been made to dethrone him, but, being in the cause of liberty, I suppose it was *not dissimulation*.

In another passage, speaking of Dyckvelt's instructions from the prince, 1686, *more than two years before the invasion*, he says, only one article came within the duties of an ambassador, "*the rest was a warrant for improper practices with the king's subjects.*" No wonder that Sunderland, who had discovered the whole design, though he basely concealed it from his master, should observe to Barillon, that the most difficult of all things was concord between two persons of whom one impatiently longed for the crown worn by the other.

Excellent proof of disinterestedness in William !

But then comes in the plea, that all deceit may be excused in the cause of the sovereign people. "The nearest interests of the Prince of Orange were *at stake* : the subjects of James conspired with a foreign prince for their laws and liberties ; and, *in such a case, men do not look very narrowly into the obligations of in-*

ternational and municipal jurisprudence."* No modern radicalism is made of sterner stuff.

Once more : — "He (Zuylslein) was sent over with their congratulations to James and his queen, on the birth of their son, at the very moment when the prince, and, as far as she was competent or allowed, the princess, were preparing to dethrone the parents, and bastardize the child."

This startles the natural good feeling of the modern Whig.

But mark how soon the man of nature is lost in the man of the people.

"There is in all this," he observes, "something revolting *at first sight*, (what, only at first sight !) considering the relations of blood and marriage between the parties ; but it should be remembered, in *extenuation*, that James was trampling at the time on the liberties and sentiments of a free people, that the Prince of Orange *had a contingent interest in the succession to the crown* in his own person, AND THAT THE TIES OF NATURE ARE MADE ONLY FOR A FREE PEOPLE." †

What the phraseology of this last observation means, I do not exactly know. If that none but a free people can feel the ties of nature, it is false. Possibly they feel them less than others, for public virtue, to be public virtue, must and does extinguish

* Vol. ii. 123.

† Hist. Rev. ii. 147.

the charities of kindred. This is proved by the whole history of real and genuine patriotism; witness the Spartans, Timoleon, Junius and Marcus Brutus, and many real or pretended patriots. I guess, however, that the sense intended is, that the ties of nature no longer bind where freedom is at stake, and that therefore dissimulation, in the cause of liberty, is heroic virtue, while, in a monarch, it is the exercise of art and *kingscraft*.

In another place, the Continuator does not scruple to hazard a conjecture, which I, at least, never remember to have met with in any other historian, that the hero William, the greatest man of his time, (for such I think him,) would not have hesitated to murder his father-in-law if necessary to his object.

He had already said, that William had been suspected of having connived at the destruction of the De Witts, and it is thus he writes concerning his possible disposal of James.

"If the existence of James presented itself as a bar to the ambition of the Prince of Orange, can it be supposed for a moment that the most aspiring of politicians, and most phlegmatic of Dutchmen, would have seen in his wife's father *any thing but a political unit of human life?*" *

What a mild wording is this of a hint that our great deliverer would have had no scruple to murder

* Hist. Rev. ii. 245.

his father-in-law. I suppose, however, that for this the former excuse would have been allowed, and that "the ties of nature are made only for a free people;" in other words, that murdering a king by his son-in-law is no crime when in the cause of liberty.

In asking why the confederates of Augsburg submitted so long to the aggressions of France, the historian says, they were probably kept back by the Prince of Orange, because "he had not yet sufficiently concerted with his *English partizans* the dethroning of James, the placing his crown on his own head, and the embarking of England, with her national resources and antipathies, in the league of Europe against Louis XIV." *

Of a piece with this is the assertion of Burnet, that William aspired to the crown in 1686, more than two years before the invasion, and long before the measure of James's aggression against the laws was full.

Lord Dartmouth told James, from the time of Monmouth's invasion, he was confident the prince would attempt it; but the following is remarkable:—

The Prince at the time (1686) contemplated being king of England, but could imagine it only on the supposition that James was deposed, and the throne *vacant*. "If the crown devolved upon the princess his wife, on her father's decease, he would not have

* Hist. Rev. ii. 110.

the slightest ground to expect that the order of succession should be departed from, and the rights of the Princess Anne sacrificed in his favour. Nothing but the shock of a revolution, the necessities of the time, and the merit of a deliverance, could warrant a man of his sagacity in such an expectation; and it was only by a very small majority of one house of parliament, that these causes, co-operating with others, raised him eventually to the throne."

But William proved, at a much earlier period, that he had little tenderness for the rights of his father-in-law.

He declared his wish, "that the bill of exclusion should be carried rather than the powers of the crown should be diminished." * He received "with pleasure the proposition of enacting, that the princess should be regent during the life of her father †;" and it would appear from a letter of Montague to him, after he became king, that he knew and approved "the Rye-House plot." ‡

If this were so, we cannot wonder at the expressed opinion that, "whilst other great political changes in nations and governments have been achieved by resolute spirits from motives of ambition, vengeance,

* Letter of the Prince of Orange to Sir Leoline Jenkins. Dall. App. p. 306. et seq.

† Ibid.

‡ Letter of Lord Montague to King William. Dall. App. part ii. p. 339.

love of liberty, or love of country, it will be found that, in the ruin of James and elevation of William, the dominant elements were intrigue, perfidy, and intolerance." Possibly this is exaggerated, but as to the motives of the patriots who invited the Prince, we agree that the tone of the letters they sent to him inviting him over, "was too like that of vassals transferring their service from one absolute lord to another.

"Religion is often mentioned, liberty and country never."

We agree also, that "Viewing the Revolution of 1688 at this distance of time, and with the lights of the present day, it is impossible to deny James a certain superiority in the comparison of *abstract* principles.

"His standard bore the nobler inscription.

"He proclaimed religious liberty impartial and complete; and had he not sought to establish it by his own lawless will, had his proceedings been but worthy of his cause, posterity might regard him, not as a tyrant justly uncrowned, but as a beneficent prince, who became the victim of an intolerant faction, an overweening hierarchy, and a besotted multitude."

On the announcement of the intention to call a new parliament, the prince is stated to have been *alarmed*. — "Whilst a hope remained that rights would be secured, and wrongs redressed, it was *feared*

at the Hague that the mass of the nation, and the leading party chiefs, would shrink from the extremities of foreign invasion and domestic war."*

How devoted here seems the prince to the happiness and liberties of England!

Of the virtuous fairness of the patriots, in their clear cause, we may judge by their treatment of the queen, and the doubt which they every where spread of her pregnancy. This was placarded on dead walls; and a pasquinade, appointing a day of thanksgiving for the queen's being great with a cushion, was fixed to the pillars of a church.

The prince's declaration itself was criticised by many zealous friends to liberty, among them Wildman, and Lords Mordaunt and Macclesfield, who rested it upon its *true* basis, a reform of the political government, and not the *petty warfare of parties and sects*.† But, with the exception of these three, it should seem that there was little but self-interest to kindle the exertions of that great mass of patriotism which the nation was supposed to contain.

Take a specimen from the exhibition of political virtue in one of the chief naval leaders, Herbert, afterwards, for this virtue, made a peer.

Writing to William with offers of his support, some months before the invasion, he says, "It is from your highness's great generosity that I must hope

* Vol. ii. 132.

† Burnet,

for pardon for presuming to write in so unpolished a style, which will not furnish me with words suitable to the sense I have of your Highness's goodness to me *in the midst of my misfortunes*. I have a life entirely at your devotion, and shall think every hour of it lost that is not employed in" (my country's? No! in) "*your Highness's service*."*

Is this the letter of a dedicated martyr to his country's wrongs, or of a sycophant courting a new master?

The Continuator of Mackintosh observes upon it, that the misfortunes of this patriot consisted in his being dismissed from places at court, which he held at the king's pleasure, upon his refusal to support the king's government†; to which Burnet adds, that being sullen, proud, and morose, the preference of Dartmouth to him in the command of the fleet was the principal cause of his joining William.

A very pretty patriot in the minds, observe, of other patriots, who record this of him!

The declaration of the prince contained two great pledges.

The calling a free parliament; and to inquire into the birth of "*the pretended Prince of Wales*."

William fulfilled the first. Why did he not do so by the second?

He was afraid of the *truth*. Was this the justice, the sincerity, or the grandeur of mind which are

* Dall. App. p. 11.

† Burn. i. 762.

said to have actuated the authors of our *glorious* Revolution?

What does Mackintosh's Continuator say of the "seven *distinguished* patriots, who with Roman virtue signed the *invitation*; and who, therefore, may be considered as the leading specimens of our revolutionary virtue?"*

They were "men who deserved well of their country, but who wanted grandeur of achievement and stature of mind, to figure as personages *truly historic*; and whose names have failed to become classic among the *destroyers* of tyrants, or the liberators of nations."†

What does this mean?—that the writer would

* They were Shrewsbury, Devonshire, Danby, Lumley, Compton, Russell, and Sidney. Hallam calls them the seven eminent persons who signed the Declaration. With the exception of Lord Devonshire, a noble gentleman, and Lumley, who was at least without stain, they were all eminent rogues. Shrewsbury and Russell proved themselves afterwards to be traitors to the cause they now espoused; Danby was guilty of the most infamous corruption, from private motives, as he had before been (and lay five years in prison for it), when as Lord Treasurer he connived at King Charles's taking bribes from France. Compton, as we shall see, was a cowardly and deliberate liar, when taxed with signing this very Invitation.

† p. 149. From this reproach, he should have excepted the Earl of Devonshire, a man, from every account of him, worthy of antiquity; full of honour, full of courage, ardent for liberty, yet a friend to the laws; in short, deserving the epitaph written by himself, and placed upon his tomb:

"HONORUM PRINCIPUM
SUBDITUS FIDELIS,
INIMICUS ET INVISUS TYRANNIS."

have wished them to assassinate James, as Brutus (that classical name) did Cæsar? or legally murder him, as Cromwell did Charles?

He goes on thus:—"It is a remarkable fact that not one great principle, or generous inspiration, escapes them in that document.

"Their Invitation is a cold, creeping, irresolute address."

The imprisonment of the bishops, and imposition of a spurious heir, were put forward as the grievances which immediately provoked and justified the expedition. But these incidents were merely seized upon as favourable (we might add *false*) pretences. The prince had *resolved* upon it *long before*. The Declaration itself was in fact one of those politic manifestoes which are issued by all *invaders* to *mask*, not disclose their purposes.

If any thing were wanting to prove this, William writes to Bentinck his *distrust* of the English parliament, on *whose mercy he must throw himself*; and that to trust one's destiny to them was no slight hazard. Finally, he reveals to his Dutch counsellors that he hated parliaments, like Louis and James.* Admirable sincerity!

Then as to those who signed the Invitation, as one of the chief reasons of the increase of discontent announced in the nation *is not so much the invasions*

* Letters from William to the Earl of Portland, quoted in Hist. Revol. ii. p. 164.

of liberty, as the attempt to impose upon them a supposititious heir, they inform him that his complimenting the king on the birth of the child has done him some injury; and instruct him, therefore, in his declaration of the causes for entering the kingdom in a hostile manner, *to rest his chief reason* upon this imposition.*

Thus roguery, deliberate falsehood, and cunning glare out through all this veil of patriotism; but being patriotism, it of course is excusable.

In the paper war that followed on this declaration, that the prince aspired to the crown is positively denied, which the Continuator himself of Sir James thinks so untrue, that he points it out as remarkable.†

In all this, but particularly the plot as to the Prince of Wales, I own I see a mean and miserable conspiracy to mystify facts which none but a weak zealot or designing knave ever said he disbelieved; and look in vain for that noble spirit of freedom which calls a population to arms, spurning all pretences but the true one, for the assertion of their rights.

Whatever were the now *proved* designs of William upon the crown, they were, at the time, concealed, from the fear that an open profession of them might endanger their success in the minds of the really honest subjects of James, who sought to defend themselves but not destroy *him*.

* See the Invitation.

† ii. 204.

I do not blame this policy in William or his abettors, supposing the object defensible. "*Dolus an virtus, quis in hoste requirit?*" It is the hypocrisy of the pretence in persons who are supposed champions of the sovereignty of the people, and the meanness of their stooping to such low arts in the assertion of a cause supposed so clear, and really so noble, that move our indignation. Nothing of the real design was avowed at first landing. On the contrary profession was every where made that to regulate, not destroy the existing government, and bring back the constitution to its proper limits, were all the objects desired. To meddle with the person or crown of James, was jealously disavowed.

How true this was, may be gathered from the conversation between a confidential agent of the prince and Lord Halifax, when the latter was sent by James to treat, only about a month after his landing.

The agent reproached Halifax for attempting a *delusive* negociation, when there was no room for trust, *and every thing must be built on new foundations, and a total change of persons.** A worthy proof that William only came as a deliverer, with no design whatever to dethrone James or seize the crown himself!

Does not the mind revolt at these gross deceits?

Not that the invasion itself was not fair, and even

* Quoted in Hist. of Revol. p. 11, from Dalrymple.

politic for the nation. It is the hypocrisy with which it was conducted that provokes our animadversion.

We are shocked at this wretched hypocrisy and the falsehood of the pretences under which it was promoted.

The triumph of our patriotism fades as our inquiries proceed. We sicken to think of the truth; and we have little exultation in being forced to confess the error we have been in, as to the real character and views of our glorious Deliverer.

Even in the conduct of this great enterprise (at least in its commencement), we search in vain for that supposed universal and simultaneous effort which belonged to a great and aggrieved nation, sensible of its rights, and determined to assert them or perish.

On the contrary, all was not so much fear, as apathy and indifference.

That at first, or at any time, it was a great and unanimous national movement, is at least not supported by the reception which the prince received.

Far from being warmly welcomed or welcomed at all, he was forced to lay the country under contributions, which he seems to have levied very *unscrupulously*.

This was little like a delivery.

His officer whom he sent to summon Exeter was committed to prison by the mayor, and the gates were closed against Lord Mordaunt who went with

horse to take possession. Being an unfortified town, without a soldier in garrison, it was soon surrendered, but this showed any thing but good will.

The mayor would neither acknowledge nor hold communication with the *Deliverer*, who was received where he advanced in person, no better than his officers. The bishop and the dean retired, the first to the king; and when Burnet took possession of the pulpit in the cathedral, and not over decently converted it into a political club, by reading the Declaration; on commencing it, the canons, the choristers, and the greater part of the congregation withdrew. Kennet declares that when Burnet concluded his address and said, "God save the Prince of Orange," the major part of the congregation responded "Amen, Amen;" but even the Continuator construes this to be only the major part of *what remained*, a sneer not unremarkable in so zealous an advocate for the invasion.

The presbyterian Ferguson met with still greater opposition from his brother dissenters; for going to the meeting-house to address them, he found the door closed upon him, and could only gain admittance by force.

In this situation the prince remained *nine days* (an immense retardation), without progress or being joined by a single person of distinction. Had James possessed half his vigour, there would have been an end of him, for any thing the nation did to prevent it.

He gave commissions to Lord Mordaunt, Sir John

Guise, and Sir Robert Peyton to raise regiments, but they could make no levies; and he began to turn his eyes to his mast-heads. So little was this great cause of liberty upheld by those whose bosoms were supposed to be all on fire to assert it.

While every thing was thus flat, and hope itself almost deadened, the prince even suffered it to be proposed to him that he should re-embark.

Did this look like the pronounced sense of a bold and injured nation resolving to be free?

In fact Lord Dartmouth says, William suspected he was betrayed, and resolved, upon his return to Holland, to publish the names of those who had invited him, as a just return for their treachery, folly, and cowardice.

So much for the heroism of our great patriots, and the universal feeling of the injured nation.

Argue then as we please for the supposed wishes of *all*, or even *some* ranks, the success which afterwards attended the Deliverer was owing chiefly, I should rather say entirely, to the want of energy, the doubt, and indecision of James himself, and the scandalous treachery of those whom he had loved best, and who professed most for his service.

This was far more efficient than any general or active feeling expressed by the community at large.

Had James with his army been in the neighbourhood of the prince when he landed, the probability is he would have beaten him directly, if only from the coldness and want of support of those whom he

came to deliver; while on the other hand at sea, had the winds and tides permitted Lord Dartmouth and the fleet to have engaged him in his passage, such was the fidelity of the Admiral and the crews, and such the point of honour of even the disaffected officers, who all said that if they met the Dutch fleet they must fight, that probably we should have heard little of the landing in Torbay.

As we proceed with the enterprize, I fear, though successful, it was any thing but glorious.

The Declaration having stated that the prince had been invited over by several lords *spiritual* as well as temporal, the king sent for the bishops and asked if it was true. Compton, of London, who had *signed* the Invitation, staid away, pretending to be out of town. No harm in that. But he appeared the next day, and being questioned by James, told a deliberate and wilful falsehood, in order to conceal his treason; and this he repeated upon being questioned again the day after, which satisfied the king, who said he believed them innocent. Soon after, this bishop planned and effected the escape of the weak child of James, the Princess Anne, and joined the Deliverer. Compton, for this conduct, is canonized, if not as a saint, at least as a hero and a patriot; to humbler conceptions of the moral duties of clergymen it seems that his conscience must have been not exactly that of an apostle.

The Declaration was everywhere dispersed: it was written by Fagel, and according to Burnet himself

who shortened it, was long and dull. Dartmouth says that though it was shortened, it preserved its dulness. Answers were published, which the Continuator of Mackintosh allows had the superiority in argument. "The prince employed *pretences* as well as the king. *Ambition* could, no more than tyranny, dispense with a mask. There was a rejoinder on the part of the prince. One sentence may be worth remembering; the defender of the prince treats the imputation of his aspiring to the crown, as a *grievous calumny*." *

After what has been related, I need not ask you why the Continuator of Mackintosh thought this was worth remembering. It was a gross falsehood; and ✓ he had said, and with no small, though at the same time with natural indignation, that the Revolution was brought about by *false pretences*.

At length, encouraged by the supineness of the king, the gentlemen of the south-west began to come in, Sir Edward Seymour at their head, who then proposed an association which was acceded to; yet, so little was the concert or the trust reposed in him that the prince suspected, and ordered an officer to *watch* him. He then reproached them all with their dilatoriness. His language was very memorable. He did not address them so much as the protector of suffering but high-minded patriots, resolved upon liberty, as a party himself concerned who had rights and a cause of his own.

* ii. 204.

His language was regal, if not insulting. It is at least remarkable. "We expected," said he, "that you that dwelt so near the place of *our* landing, would have joined *us* sooner. Not that we want your military assistance so much as your countenance and presence, to justify our declared *pretensions*, rather than to accomplish our *good* and *gracious* designs."

He then proceeds, in a tasteless and hollow strain of more than regal pomp: "Though we have brought a good fleet and army to render these kingdoms happy by rescuing all Protestants, (*et cætera*,) yet we rely more on the goodness of God and the *justice of our cause* than on any human force and power whatsoever." Here let us pause to inquire (for it is by no means apparent) what he means by God and his cause. What cause had *he*, whatever might be that of a nation? What claim to England, or the rights even of the meanest citizen, unless naturalized, which I do not find he was? His cause therefore was that of a conqueror, and his object that which he had disclaimed, the throne.

He finishes thus: "Therefore, gentlemen, friends and fellow Protestants, we bid *you* and all your *followers* most heartily welcome to *our court* and *camp*."

What think you? Is this the language of a man, however magnanimous, who as a lover of liberty, armed for its defence from a generous disinterestedness to aid the rights of oppressed sufferers, and restore them to their own? or, of a prince pretender,

seeking his own objects, and making use of those he pretends to relieve, to obtain them? I own, had I been a Devonshire squire I should, after this, have hesitated before I joined him, on the principle of rather bearing the ills we have, than fly to others which we know not of. It is certain that such a squire would have paused till he had obtained some explanation of what was meant by a *foreign prince*, not even an Englishman, when he talked of *the justice of his pretensions*. Even the Continuator of Mackintosh is provoked into the observation that "he made very light both of the previous invitation and the countenance of his English friends, compared with his own pretensions and the good and gracious obligations he was conferring upon the three kingdoms; and that he, a distant contingent claimant, sought the crown of these three kingdoms as a return, while he *professed* to practise virtue as its own reward. He departed, in addressing the English, from the manly simplicity with which he was accustomed to address the Hollanders. The English people, *as if by a tacit understanding**, are never named; none are recognized beneath the condition of *gentlemen*, unless by the feudal and contemptuous denomination of *followers*. It is a distinctive trait of the Revolution, *that the people* are not parties to it, even by name, as a decent formality." †

* Evidently, as is meant, with the gentry, in contradistinction to the people.

† ii. 309.

So far the opinion of the historian of the Revolution, on the conduct and views of its own hero; who had as yet made little advance, still waiting, we suppose, for the great and universal defection which was to follow. Even in the defection which did follow, I know not while James remained true to himself, that we can detect any thing of that unanimity even among the troops, still less in the efforts of the unarmed population, which might entitle them to be denominated *national*. Few or no civilians had joined; and, though some of the officers of sufficiently high rank, being also men of birth connected with the planners of the undertaking, took opportunities to desert, they carried over with them few, nay, were opposed by most of their men. The first patriot deserter, Lord Colchester, could only "*seduce*" four troopers to accompany him. Lord Cornbury indeed, James's nephew by marriage, deeply wounded him by joining the prince; but even *he* failed in carrying over much of the military force. On the contrary, he was forced to use stratagem and falsehood to make them move. Being left in command of three regiments of horse at Salisbury, he marched with them towards Exeter, pretending to have orders to attack a post of the enemy. His major, Clifford, demanded a sight of his orders; and, with major Littleton and other officers, questioned him so closely, that he lost his presence of mind, and fled from his own men with some officers indeed, but only sixty troopers. Langston, who commanded one

of the regiments, now told them he had brought them not to fight, but to join the prince; upon which his major, Norton, and several subalterns refused obedience; for which they were dismounted, disarmed, and plundered, and with "much ado," says James, "*got liberty to return on foot to the army.*" The other two regiments, *seeing themselves betrayed*, fled back in disorder. Most of the troopers of Langston's regiment returned as they found opportunity, "which showed," says the king, "greater honour and fidelity in the common men, than in the generality of the officers, who usually value themselves so much for these qualifications."* This is any thing but a proof of a simultaneous effort of a resolved and unanimous nation.

Lord Clarendon, Cornbury's father, apparently in despair at the conduct of his son, ran to throw himself at the king's feet, who received him with kindness and pity, only to see him soon after desert, *more meanly* than Cornbury himself. Assuredly, neither father nor son were heroes nor

* Life of James II. There is also a very curious and a very interesting account of this transaction drawn up by the major (Norton, above mentioned), which so graphically sets forth the hard and nefarious treatment of these men, and the scandalous means attempted by the officers who deserted to seduce them from their allegiance; that, with a view to the *important* information it contains upon a point rather slurred over than examined in almost all the histories, I have thought it but right to throw it into an appendix. The narration is in a letter from Norton, preserved in Carte's Memorandums, and published by Macpherson.—See APPENDIX to this, No. i.

men of honour, though they might be very virtuous patriots.

A farther proof of the little alacrity that was shown at first to join the prince, was in the capture of Lord Lovelace, who, proceeding with seventy horse (who probably knew not his intentions) to the army of William, was attacked by the militia, and made prisoner with thirteen of his men.

The rest of the army it should seem, with the exception of some of the officers, would have remained firm to their duty, but were paralyzed by the total incapacity of their general, Feversham, and the vacillation of the king. On the first rumour of desertion, Feversham abandoned all his posts, and retreated towards London. There the king remained, confounded more (and with reason) by the treachery he expected, than what he had already experienced. Sunderland, Godolphin, Churchill, his ministers, his military officers, his friends, to which add his daughter, were all preparing to desert, nor did he know whom to trust. One does not blame these persons for taking part against him, but one abhors the execrable treachery of continuing to serve only to betray him. Where was the manliness, the devotion to an heroic resistance of tyranny, exhibited by these high persons in the following scene between them and their master?

After holding a council with his ministers he summoned his general officers and colonels, and told them he would call a parliament as soon as peace was

restored; and moreover promised every thing, his subjects could desire in regard to their liberties and religion. He then made this remarkable concession to them as individuals, that, if any among them were not free and willing to serve him, he gave them leave to surrender their commissions, and go where they pleased; that he believed them men of too much honour to imitate Lord Cornbury, but was willing to spare them if they desired it, *the discredit of so base a desertion.*

There was here something surely that partook even of greatness, and one would have thought, must have had a corresponding effect upon men of honour, if such they were.

"Accordingly, they all," continues the king, (for from his memoirs this extract is compiled) "seemed to be moved at the discourse, and vowed they would serve him *to the last drop of their blood.*" The Duke of Grafton and my Lord Churchill were the first that made this attestation; "and the first," adds the compiler of the Life of James, "who, to their eternal infamy broke it afterwards, as well as Kirke and Trelawney, who were no less lavish of their promises." So much for the honour of these patriots; which, however, as it is not the object of our strictures to criticise, we pass for the present, to attend the march of events.*

* At the same time it may not be amiss to remember the letter of Churchill, who, if the military glory of his after life had not gilded over this early baseness, would have been only known in history as a villain. I mean the letter to William, in which, while he was thus

A petition was now got up by Lord Clarendon (who had been in such despair at his son's dishonest conduct,) in conjunction with several prelates, to call a free parliament, and spare the effusion of blood, that is, to treat with the Prince of Orange. The parliament was promised, but not till the invasion had been repressed; in which who shall say the king was wrong? He afterwards set out for the army meaning to oppose William, but was prevented from advancing by an attack of bleeding at the nose so violent that he was utterly incapacitated from acting. This he says was providential, for he was afterwards informed that Churchill, Kirke, Trelawney, and others, who had been foremost as we saw in swearing fidelity to him to the last drop of their blood, meant to have seized and delivered him to William, or something worse.

The fact is contested; but no arguments other than opinions are alleged against the belief of it which is asserted. Coxe, the biographer of Marlborough, merely *disdains* it, but I agree in a pungent remark: "That he should have remembered that his hero

continuing the trusted servant and friend of James, he devoted himself and his honour, as he called it, to the service of the Prince. This and the other infamies of Cornbury, Grafton, and many others, make the heart sick to think how ignoble were the means which produced so noble an end. Like Falstaff, we may say, "If I be not ashamed of my soldiers, I am a soured gurnet."

was the last person in whose case a charge of perfidy and meanness could be treated with contempt.*

We have said that it is not our purpose to investigate the military conduct of James or his more faithful adherents in the steps they took to oppose the advance of William. With so much rottenness and treachery in those he most trusted, much greater faults might be excused, if excuse was the object of these strictures. But my question is only as to the true character of the Revolution, and whether in the revolt of many commanding officers, in the imbecility of others who remained faithful; in the general fidelity of the private soldiers, or in the apathy of the greatest part of the gentry and common people not in arms, we descry, even afar off, the traces of that august and heart-stirring spectacle which the history supposes; that of a great nation unanimously resolving to assert the great first principles of freedom, and to relieve themselves by a universal effort to resist and punish a tyrant. If, instead of this, we find that success was chiefly owing to dishonour and hypocrisy in the means, and that even the end was as much to gratify private views of self-interest as the nation's welfare, as philosophers, freemen, and lovers of our country's fame, we may be bitterly disappointed.

* ii. 217. We shall presently come to the investigation of this very interesting question, and a more atrocious charge belonging to it.

We have already seen how little the effort was what the French called a rising "en masse." The people (*as such*) were not considered; of the 32,000 men who composed the royal army, the king, though he had lost a large proportion of officers, was abandoned by only a few hundred privates, and that "the prince had received no efficient accession." It was to the weakness, therefore, and personal dismay of James, (dismay at being deserted by his best friends, and even his children,) not to the vigour of the nation, that the progress of William towards the capital was chiefly owing. The desertion of Prince George (called in derision by the king "Est il possible") was intrinsically of no consequence, and James was but right in saying that the loss of a good trooper would have been more severely felt. On this immaculate patriot there is this observation, that "he affords one of many proofs that the meanest faculties suffice to practise knavery with success." One of his flimsy reasons, stated in his letter to James for abandoning him, was his alliance with Louis XIV. He forgot, says the historian, that his own brother, the king of Denmark, was at that moment also the ally of France.

But the defection of Anne was a severer blow, and prompted that pathetic exclamation from James, "God help me, my own children have forsaken me!"

He had, indeed, ever been to her, as well as her sister, *who also was cognizant of, and approved the*

enterprize to dethrone their father, the kindest of parents.

But patriotism and love of liberty have been said to be paramount virtues; and they are so. How far, in the present case, they were mixed up with mere personal ambition in the Princess of Orange, who was to be a queen, or an intolerant zeal for her religion in a mere bigot like Anne, may be made a question. In regard to the last, "she was taught to look upon the Church as grievously ill-used in being deprived of the pleasure of crushing and worrying papists and dissenters." She also believed that her father had been base enough to impose a spurious heir upon the kingdom, and, of course, so far to lessen her own contingent expectations of the throne. Are we wrong then in venturing to believe, that the purity of patriotism in these two princesses might be somewhat doubtful?

The real characters of the other leading patriots who brought about the Revolution, we shall hereafter have occasion to discuss; meantime, it is really curious, in pursuing the narrative, to observe how these Whig benefactors are handled by their Whig historian.

Lord Bath, governor of Plymouth, having declared for the prince, he says, "this lord had been some time waiting to ascertain the stronger side: and added another example of intrigue and ingratitude."

The Duke of Ormond, Lord Drumlanrig, and Sir George Hewet, having attended Prince George

in his flight to William, he was accompanied by others of meaner rank, *but not of meaner principles*. The duke figured in the gazette as volunteering to raise troops against the invasion, while he was deep in the intrigues of the prince for corrupting the faith, not only of the army, but of the fleet. Drumlanrig was also a young man, and "it is not easy to reconcile with the frankness of youth the treachery with which these noblemen abused, up to the last moment, the favour, confidence, and hospitality of the unfortunate king."

This is at least strange in the eulogist of the Revolution; but he makes it the channel of, to himself, a more gratifying eulogy on former exertions of liberty; for he adds, "But the vigour and virtue of the English nation and character had dwindled from the restoration of the Stuarts. A degenerate race succeeded the men of the Commonwealth. The aristocracy seem to have been born without that sense which is supposed to be their peculiar distinction, — the sense of honour." *

Such then is the opinion of, at least, one great champion of the Revolution, as to the virtue of many of its most active partisans. We have seen the character of Lord Cornbury; let us add to it that of his father Lord Clarendon, an influential leader.

"He was a person of mean understanding, and still meaner conduct. After invoking God in his

* II. 994.

* K 11

despair upon the calamity of beholding his son a rebel*, he wrote to the Princess Anne, *complimenting* her upon her desertion. Finding that neither he, nor his brother Rochester, were likely to be appointed to treat on behalf of James with the prince, he indulged in pedant wisdom and ungenerous reproaches against the fallen king; deserted the next day to the prince; was received without confidence or respect; had the baseness to suggest that James should be sent to the Tower; continued to be neglected, or despised by William; and ended in making professions of conscience, loyalty, and Jacobitism."†

This was no more than what Marlborough did afterwards. These benefactors to their country, and champions of its civil rights, were certainly not of Roman breed!

Was Halifax, the polished, the eloquent, the witty, the vigorous, the highly cultivated, the philosophic, the active, one jot better than they? No! According to our historian, his reputation needs all the indulgence that can be derived from the *universal* degeneracy. Less daring than his uncle Shaftesbury, less corrupt than Sunderland, he was their equal in the versatility of intrigue.

Why does he say he was less corrupt than Sunderland, though that infamous man, while he contributed perhaps most to the Revolution, was the pattern

* This appears in Clarendon's own diary.

† He was detected in the plot to restore James, might have been put to death, and was exiled to his country house.

and father of all corruption? Halifax was appointed commissioner by the king to treat with the prince, and no sooner was so, than he betrayed him. He opened himself to the confidential agent of William, and agreed to support all his measures.

It is worth while to consider how the real designs of the Deliverer had now begun to be unfolded. The mask was dropt between this agent and the noble commissioners. The pretence of a free parliament, the chief reason urged for the invasion, by William in his declaration, was thrown aside. The agent avowed that *new foundations and a total change* of persons were to be adopted; for which purpose, it was urged in print and conversation that the king would not adhere to his engagements, and that it would be the greatest folly to *graft any thing on the old stock*. Far from opposing this, the virtuous Halifax assured the agent who had told him that his acceptance of his commission would subject him to unhappy suspicions, on the part of the prince, that he would act in such a manner as not to incur his censure.*

Is not this patriotism a fine thing, when it can gild over such conduct, place such a man in the first ranks of history, and inscribe him among the foremost of those whom we look upon as the fathers of our liberties? Let it be remembered that, as is supposed from fear, Halifax declined to inroll himself among those who invited William to appear in arms; and that

* ii. 234., where all the authorities are cited.

from this, and other instances of interested inconsistency, he obtained the inglorious epithet of *Trimmer*. But to return to the narrative.

Defection, from the imbecility of James, was now at its height. The prince had advanced to Hungerford, where the commissioners from the king were appointed to meet him. There were joined to Halifax, Nottingham and Godolphin; of whom the latter had the dexterity or dishonesty to possess at the same time the confidence both of James and William. Upon their arrival the prince would not see them, but referred them to commissioners of his own. Among these (*mirabile dictu*) was the very Lord Clarendon whose loyalty we have been describing. But this seems to have been to mark his (William's) contempt both of Clarendon and Halifax, who were known enemies. In truth, the negociation on the prince's part was a mockery. He wanted nothing so much as delay; for he now wanted the crown, which he could not obtain by any negociation. His engines had for some days been at work for it, and his means, adds the historian, were unworthy his character.

✓ A spurious manifesto, called a *third* declaration of the prince, was published. It did not, as is said, proceed from the prince himself, but it was found too useful to be contradicted; for it proclaimed that all papists who had arms in their houses, or were in office, should be treated as robbers, freebooters, and banditti, refused quarter, and delivered to summary execution. It set forth that the papists were

in arms to destroy London by fire, and massacre the protestants; called upon the magistrates to secure them, who, if they disobeyed were themselves, to be treated criminally.

All this was believed; copies sent to the lord mayor and the king, who, with his courtiers, were panic-struck, and, in fact, through a lie, did much service. Was this the high-minded spirit of a generous, lawful, and general insurrection? Did so pure a cause require the aid of false witnesses? The Declaration was afterwards, indeed, denied by William; but not only the advantage of it was pocketed, upon the king of Prussia's principle, that a lie sometimes does good for four-and-twenty hours, but Speke, who claimed to be the forger, declared, after William's death, that he showed it to him, and that he approved. His disavowal of it was, at least, only verbal, and confined to those about him; and his historian himself winds up with these remarkable passages "The prince had already the reputation of being not only a phlegmatic, but an *unscrupulous* politician. His policy was charged by some with tolerating, by others with sharing, the practices which stimulated the populace of the Hague, to massacre the patriot brothers, De Witt, and give him undivided sway over the republic. The profit he made of this impudent and atrocious fabrication leaves an additional stain upon his character." *

* Hist. Revol. ii. 235.

What can we say to this, but to ask in surprise, if this can be the opinion formed by our great historian of liberty, of liberty's greatest champion, our glorious deliverer?

It is a grief to add what is stated of Lord Dartmouth—surely a man of loyalty and honour, though, as it should appear, more weak and hesitating than we wish to consider him. He had orders from James, who had sent his son to Portsmouth to have him conveyed in a yacht to France. At first he promised to obey, and then retracted: his excuse was the strictness of the law against it*, and the bad consequences in his mind of the measure. This we should not notice to his disadvantage; but in Dalrymple there is a letter from the prince to him, taken by Byng, urging him to join him, and offering him, if he did, to *continue* him in the command, with an assurance that Herbert should not be advanced over his head. "This letter," says Byng, "had some effect upon him. From that time, he seemed *inclinable* to the prince's party." The letter was laid privately on his toilet, by his own captain, and he never instituted any inquiry upon it, though an affront which few men of honour but must have resented, being a direct temptation to desert.

I am far in this from saying that there is the least proof of even intended treason in Dartmouth; nor do I blame the prince for tempting him; but in such a

* Query, what law?

system of bribery which do we recognise: the voluntary rising of the nation against invaded rights, or the ambition, from personal interest of one prince, to usurp the throne of another? Had Dartmouth accepted the offer, and joined the prince, would it have been from public virtue?

Defection, or distrust, having now become universal, James resolved, and attempted, to quit the kingdom. This was precisely what the prince most wanted: it was what was most conducive to his own undisguised object—the crown of his father-in-law.

It is not to our purpose to inquire by whose advice he was in this chiefly influenced: it was said by that of Halifax and Godolphin, his own commissioners, who, knowing that it played the game into William's hands, the Continuator of Mackintosh observes upon it as "one of the *meanest* and most *characteristic intrigues* of the Revolution."*

Mean intrigue, then, is the characteristic of the Revolution! What must have been its glory? What the triumph of the sovereign people?

Godolphin's share in the advice is not questionable; but the baseness of Halifax almost exceeds belief. Burnet says that that lord, *while transacting his commission* (proh pudor!) asked him if they had a mind to have the king in their hands; that he answered no; that Halifax then asked, what if he (the king)

* Hist. Revol. ii. 240.

had a mind to go away? Burnet answered, nothing they so much wished. This he told the prince, who approved both answers.*

Upon this, Halifax wrote to the king, informing him of a design upon his life, which made him resolve to withdraw; and James himself says, that if he did not go, the prince would, probably, find *other means* to send him out of it (the kingdom) and the world too."†

On the morning after his departure, which had been concealed, his antechamber was crowded with lords and gentlemen, who rushed in to attend his levee. He was gone, and had addressed a letter to Lord Faversham, thanking the army under him for their services, and desiring them "not to expose themselves (for his sake) to a foreign enemy and poisoned nation." This letter was read at the head of 4000 men at Uxbridge, many of whom, it was said, shed tears. These circumstances do not bespeak the unanimous hatred of a nation to a tyrant, still less its desire to sit in judgment upon him. It is true that upon his flight being known, the rabble of London rose in their character of robbers, and committed great excesses; but it was chiefly for the sake of plunder, not of promoting their political rights.

It is not incurious to observe the spirit shown at this time. "There was, even in the capital, no

* Burnet.

† Memoir in *Life*, ii. 249; cited by *M.* ii. 242.

public spirit, no democracy, no people, no magistracy, worthy or conscious of its mission. All power was divided between the aristocracy and the rabble. When, upon the king's flight, the populace began the work of plunder and devastation, the citizens and their magistrates were alike supine."*

Here, again, we are at a loss to discover the great injured nation, acting upon first principles, and the inalienable rights of resistance. So little so, that there being no concert, nothing organised, the city might have been fired and pillaged by ruffians, had not the lords spiritual and temporal, at least those who happened to be in town (many of them, probably, who had recently so crowded the king's antechamber, to pay their duty to him, thinking him there), proceeded, in their individual capacity (for they had no collective one), to confer with the lord mayor and magistracy of London with a view to preserve order. Finding the magistrates (though we must suppose them to have been so alive to *the rights of a reformatory revolt*) utterly incompetent to act, these lords took upon them the temporary government, and, being obeyed, preserved things, for a time, from destruction.

There was nothing to blame in this: it was rather matter of praise. There was great confusion the house was on fire; the owner had fled; and whoever had influence enough to command, and be

* ii. 250.

obeyed in restoring order, though he had broken a thousand laws — such is the privilege of necessity — only did right.

It was well the lords acted thus; for though, as to legal power, they were only so many private gentlemen, they had influence from their names, and obtained obedience from good will, when the law could do nothing.

They assumed the whole government for a time, like a provisional committee of safety, and were luckily obeyed by the city, the army, and the fleet. They took the command of the Tower by stratagem from the king's governor Skelton, and issued warrants to apprehend all popish priests and Jesuits in London; a still stronger proof of the rights of necessity. More than this, they issued their famous Declaration, imputing the king's flight to popish counsels, which was a falsehood, because it arose from the fears *purposely* instilled into him by Halifax and Godolphin, in league with the prince, though trusted by James.

In consequence of this, they resolved to "*resort*" to the prince; and the corporation of London joined them in an invitation to him to vouchsafe to repair to the city. This, Burnet, the partisan bishop, has the effrontery to represent as an invitation in form, to assume the government, and it was so believed by the prince, who had already assumed the style of a sovereign, issuing orders, disputing those of the king, and dating them from *his court* at Henley, from which he moved, with all royalty, to Windsor.

Here the later historian of the Revolution breaks out into a most unwarrantable abuse, not only of James, but of kings in general.

"James," says he, "like all tyrants, and *most kings*, considered the nation as made for his use."

Indeed! Most kings! Did Agis, or Agesilaus, or Codrus, did Numa, or Trojan, or Antoninus, did Alfred, or Robert Bruce, or Henry IV. of France, did our own princes of the present family think nations made for their use? I believe William did; for, with all his zeal for our liberties, it is clear, even in his historian's own opinion, that the great and deciding cause of his invasion was, under false pretences, to obtain the throne of England.

There is another inculcation which an enlightened lawyer, versed in the law of nations, surely could not mean to be serious. It implies, that when a person, whether king or otherwise, is attacked in war, he is not to consider himself at war, and avail himself of his means of defence. Or does he mean, that being civil war between the people and a king, the latter is not to be considered as a legitimate belligerent?

"James," this historian goes on to say, "*therefore* (that is, because he so thought) did not scruple to leave his people in a *state of anarchy*, with the *selfish* purpose of *embarrassing* his *rival*, and deriving advantage from public confusion." *

* Mackintosh, vol. ii. 253.

I do own this passage filled me with astonishment. Selfish purpose! What! is it selfish to resist an assailant? Anarchy! Who caused it? *Embarrassing* his rival! was he then to facilitate his enterprise? Derive advantage from confusion? Are we not to confound an enemy? One would suppose that this historian thought it was the bounden duty of James to fall at the feet of the man who came to rob him.

In the same spirit, having cancelled the writs for the new parliament, and taken away the Great Seal, he says that "he, (the king), vainly imagined that there was some inherent power, not only in his person, but the mere symbol of his will. Kings seldom reflect that their great seals are but so much wax, and their persons but ciphers, when they are no longer supported by the will of the nation or by hireling force."*

This is only worthy of a mere declaimer against kings, endeavouring to excite a mob. To you I need not say how easy it is for demagogues to rail; and, were it worth while to dissect this fine passage, should we be able to discover that it was even sound? Could James have embarrassed his enemy, he had a right to do so; and if we ask calmly for the proof of the other imputation as to the inherent power which he supposed to reside in his person, where is it to be found but in the heated fancy of the writer? As to

* Mackintosh, vol. ii. 266.

the last part of the assertion, that kings and seals are but ciphers and wax, without the support of their people, or a hireling force, it is as certainly true that a vicious rebellion may succeed, as well as the most holy insurrection. What then does this fine declamation end in but the right of the strongest? The remark was gratuitous.

To come coolly to particulars, the question is, as I have stated, who caused the anarchy? Not James! Attacked and betrayed in the midst of peace, and declarations of duty; attacked by his *innocent* invader, nephew, and son-in-law;

"Deserted in his utmost need,
By those his former bounty fed;"

informed by his own minister that his life was threatened, without refuge, without power, what could he do but fly?

Of all the accusations brought against him, well or ill-founded, this last, as it is the most unexpected, so it is least proved or provoked. As a king and as a man, there are faults enough proveable against James, who was no more than justly opposed in his endeavour to subvert the laws; but this attempt to aggravate his sins against the nation, for using his own rights of self-defence, partakes of the spirit of the times and of contemporaneous partisans, rather than the able and impartial judge at the distance of a century and a half.

But to return. In the meeting of the lords at

Guildhall, not above thirty in number, and in the voluntary obedience paid to them, we find a full exemplification of the case of necessity.

Hitherto the acts of the prince had been purely military, and if he had been obeyed or joined, it was as Monmouth had been obeyed and joined, his followers running the risk of what might be to come, the sovereign power being still in the hands of the king.

But the king having abandoned the helm, and the ship without compass, in very necessity the assembled peers took upon themselves, not so much to command as to suggest, what seemed vital measures for the safety of the vessel. In this they did no more than any passenger might have done in the same circumstances, provided the crew had good opinion enough of him to obey him. These lords addressed the prince; so did the city; so did the lieutenancy; and it will be critical to canvass what it was they communicated. Did they broach the opinions of our two great enlightened authorities, Price and Mackintosh? were they even in circumstances to call, or believe, themselves the nation? I should say not.

Echard says, that of the lords "who were *in and about town* (a sort of *chance* assembly themselves) there were only about thirty, including seven bishops. The names of all are given; none of them violent opposers of James, still less upholders of Revolutionary doctrines; many, the direct reverse. The Archbishop (Sancroft), the Bishop of Ely,

(Turner) the Lords Mulgrave, Rochester, North and Grey, might even be denominated Jacobites. These never could intend, in addressing the prince, to protect the state in its unlooked-for emergency, to alter the whole frame of government, *cashier* the king, and elect a stranger, — whether William, *Jeffries*, or *Kirk*, — in his stead. Burnet, indeed, as we have said, has the impudence, or bad faith, to call the addresses above mentioned an *offer of the government* to the Prince of Orange. Let the addresses speak for themselves.

After professing their regard for the protestant religion, and their *reasonable* hope "that, the king having issued his writs for a free parliament, they might have rested secure under the expectation of that meeting, the lords add, "But his majesty having withdrawn himself, and, as we apprehend, in order to his departure out of this kingdom, by the pernicious counsels of persons ill affected to our nation and religion, we cannot, without being wanting to our duty, be silent under these calamities, wherein the popish counsels which so long prevailed, have miserably involved these realms.

We do therefore unanimously resolve *to apply ourselves* to his highness the Prince of Orange who with so great kindness, to these kingdoms such vast expenses, and so much hazard to his own person, has undertaken, *by endeavouring to procure a free parliament*, to rescue us with as little effusion as possible of christian blood from the imminent danger of popery and slavery."

"And we do hereby declare that we will with our utmost endeavours,"—(do what? cashier James, and place the crown on William's head? No!)—*assist* his highness in the obtaining such a parliament with all speed."*

The addresses of the city, and of the lieutenancy of London, are equally worthy of notice.

The former, after complimenting the prince on all he had done for the protestant religion, and thanking him for appearing in arms to rescue the country from popery and slavery, observes that they had hitherto looked for remedy from his *majesty's concessions* and *concurrences* with the prince's just and pious purposes expressed in his gracious Declaration.†

If so, then had the king not withdrawn, but gone on with his concessions and concurrences, it was clear that they thought all wounds would have been healed. At any rate there was no thought of setting up their undeniable right of calling kings to account and dethroning them for misgovernment.

What, then, prompts them to apply to the prince? Not the continuation of the tyranny of James, but his leaving them without remedy, by withdrawing from the exercise of his power. Herein, being finally disappointed (not by the continuation of the tyranny, but the desertion of the king) "we presume," they say, "to make your highness *our refuge*," and they

* Echard, iii. 931.

† Ibid. 931.

accordingly, invite him (to assume the crown? No!) to repair to the city, where he will be received with joy and satisfaction.

No doubt of it, when the government seemed broke up, and there was no other refuge at hand.

It is remarkable that the address of the lieutenancy was infinitely more pointed, and spoke more decidedly than either that of the thirty lords or the city magistrates. They are concerned, they say, that they had not before an opportunity of testifying their resolution to venture *all* to attain the glorious ends which the prince had proposed for settling these distracted nations.

What the prince had proposed to the world, (I speak not of himself) is only to be found in his Declaration; a free parliament, and an inquiry into the birth of the Prince of Wales. In all the three addresses was there any thing of bringing the king to trial to answer for his misgovernment, through the means of the prince, or was any reason assigned for inviting him to the city, but its having been abandoned by the king?

What now, then, becomes of Burnet's silly, or wicked, misrepresentation, that these addresses were an offer of the government to the prince? The lords talk of *assisting* him. That a man should *assist* another to assist himself to obtain his own object, is indeed a remarkable phrase; but it is any thing but an offer to place himself in subjection to him. I do not deny that these thirty lords, who

happened to be "in and about town" were looked up to by the deserted people in their vicinity as authorities whom, for the sake of their safeties, they for a time obeyed; and that by their conduct they deserved well. Neither do I question that in these addresses the intention was to propose *pro tempore*, and *until the desired free parliament should meet* and provide for the exigency of the *deserted* government, that the addressers wished William to exercise a provisional power, in the same manner as they had done themselves. But that they intended to overthrow the dynasty of James, or deny that he was still their sovereign, still more that they could ever pledge the nation, or claim to represent its resolves to this effect, no whiggery that then existed ever supposed or asserted. That such was the opinion whether at Guildhall where these lords assembled, or in the great majority of the nation, is contradicted by the protracted and stormy debates of the Convention itself, where the still existing sovereignty of James, and his right to the throne, under whatever modifications, were asserted, defended, and contested by those who were personally most opposed to him, and were active in calling in and siding with the prince as their ally and deliverer. We are not, therefore, even yet near that great revolutionary doctrine, supposed to have been so incontestably established by these wonderful events.

But what shall we say to the intentions and temper against the king, supposed to be so clearly manifested

by the mass of the nation, when we consider the reaction which, from an unforeseen (and to William unwelcome) accident, took place almost immediately after the addresses had been dispatched.

The story of the arrest of the king at Feversham, in his endeavour to escape to France, is known. The incident, which might have terminated his life, ended in a momentary triumph. Having escaped the mob, he was persuaded by Lord Winchelsea, the Lord Lieutenant to return to London. The consequence of this I cannot relate better than in the words of old Echard.

"This strange adventure had various effects upon the Prince of Orange and the city of London. The former seems to have desired that the king should not have been stopt nor brought back, and the latter appeared filled with a joyful surprise; most people there being glad of an opportunity to convince the king, *that there was never any ill design against his person*. As for the peers and privy council, they were likewise variously affected by this news, *more especially by reason of the advance they had made to the Prince of Orange*. However, after some debates, they appointed four of their members, namely, the Earls of Middleton, Ailesbury, Yarmouth, and Feversham to wait upon his Majesty, and to invite him to his palace at Whitehall; to which, though at first he showed some reluctance, yet at last he condescended.

"The peers also dispatched an express to the Prince of Orange, to acquaint him that the king was still

in England; at which time his highness came to Windsor, and lodged in the prince of Denmark's apartment, which was prepared and made ready for his reception.

"As his highness was much surprised, so it is easy to believe that he was not very well pleased to meet with new obstructions when his affairs necessarily called him to London.

"Therefore, after a long consultation with the chief of the nobility and gentry about him, he dispatched Monsieur Zuytlestein to the king to desire him to continue at Rochester; but this express missing his way, his majesty left that place on Sunday morning, the 16th of December, and about four in the afternoon entered the city of London, as it were in triumph, and went to Whitehall, attended by several noblemen and a great number of guards, while multitudes of people that crowded to see him welcomed his return with their loud acclamations; and the night concluded with the ringing of bells, illuminations, bonfires, and other such like demonstrations of joy and satisfaction."*

In all this we look in vain for the acts of a resentful nation, conscious of their strength, and resolved to use it for the punishment of a delinquent king. Yet, though thus received, what might still be his fate from the arms of his invading rival may be questionable. Probably, deprived as he was of all

* Echard, iii. 931.

military aids, he would have been conquered in the field; but so much was he encouraged by this apparent return to loyalty in his subjects, that he thought his power had revived, and he not only summoned a privy council, but it was well attended, and an important order, which he immediately made, was signed by several members, among them the Duke of Hamilton, who soon after, without any new act of aggression on his part, took the lead against him in Scotland, and joined in the memorable vote of that country, that he had forfeited the throne. A more important person in regard to Whiggery set his name also to this order; the great patriot Godolphin, whose Janus face looked quite as much towards William, though he here acknowledged James to be still his master. It was also signed by Trevor, master of the rolls, and by Titus; the last any thing but a tool of tyranny.*

The reflection of Mackintosh's Continuator upon this incident is worth commemorating. "Reigning princes," he says, "are not selected for their virtues, or selected at all. James II. was really one of the less despicable princes of his time; and the mass of the people in all countries were as low in the scale of reason and knowledge as their sovereign."† Our revolutionary ancestors are at least obliged to him.

He goes on to review the effects of the king's

* Echard, iii. 931. The other signers were Lords Craven, Berkeley, Middleton, and Preston.

† Vol. iii.

return on the prince's court at Windsor. It startled, he says, these enemies of James. The prince, astonished at the sudden change, and alarmed by *the inconstant genius of the English people*, desired the advice of his principal friends. Clarendon, taking conquest for granted, advised the Tower, and, as Sheffield writes, hinted at something *farther*. The prince preferred holding the king to his avowed purpose of withdrawing. "*It was thought necessary*," says Burnet, "*to stick to the point of the king's deserting his people; and not to give up that by entering into a treaty with him.*" In other words, adds Sir James, to dethrone him for that, as a voluntary act, inspired by popish counsellors.

So then, after all, it is confessed, *that James dethroned himself*, not the sovereign injured people; and the whole glittering precedent of the inalienable right of resisting tyrannical sovereigns has crumbled to nothing. This was, in fact, the policy finally pursued. The flight of James was critical upon the question, for it produced the vote of abdication, by which the throne was vacant; "so that," as Echard observes, "the people fell into their original right (of cashiering? No!) of *filling* the vacancy. Thus the Prince of Orange," adds he, "succeeded unspotted by any parricide."*

But the Continuator cannot restrain his indignation at this. James II., he says, "by assuming a

* Echard, vol. iii. 941.

power above the laws, *assuredly* incurred the penalty of forfeiture of the throne. But he should have been unhinged by an *ingenuous, just, and national* proceeding upon principles worthy of a nation exercising the most sacred of its rights, and not upon *false pretences, and perfidious arts.*"*

The Revolution then, according to this gentleman, was not an *ingenuous, just, and national* proceeding, but brought about by *false pretences* and perfidious arts.

I think here is enough (added to what has preceded) to show that in the opinion of those themselves whom we oppose, our Glorious Revolution was a very inglorious thing, or, at least, not quite so glorious, or cogent, in the support of the doctrines erected upon it by modern Whigs, as we in general consider it. The task, however, will be only better performed if we attend upon the march of its history a little farther.

In compliance with the scheme avowed by Burnet, to get James out of the way, without the further trouble of considering certain grand first principles of the sovereignty of the people, which were not then so perfectly understood as by our more enlightened modern instructors, every artifice of terror, treachery, and chicanery, was put in practice against the weak and infatuated king. The Dutch guards were sent in the night without notice to take possession of Whitehall and dispossess those of England. The stout old Earl Craven, who commanded the last, would

* Hist. Rev. ii. 263.

have fought them; but the king, to spare bloodshed, prevented him, and went to bed, but was roused from his sleep by an order from the prince, borne by the Lords Halifax, Shrewsbury, and Delamere, to give up his palace and retire the next morning to Ham. The Continuator of Mackintosh calls this a *black* transaction on the part of the three noblemen concerned: I cannot conceive why, at least upon his own principles; for if James had given his subjects a right of war, so that he might have been tried and sentenced even upon mere notoriety of acts*, he might have been killed in the field, or judged to death by his subjects. How, then, was it a black transaction to wake him at night, with an order to retire from London? But what shall we say to the conduct of Halifax?

He is more correct in what he says of the conduct of Halifax, which, he observes, was indescribably base. Having, as commissioner of the king, secretly betrayed his trust, he now, adding open shame to hidden perfidy, came back to the king, commissioner or *something worse* from the prince.†

It is stated that William could not help smiling—he who smiled so rarely—at the willingness with which

* Vide supra.

† Sheffield Duke of Buckingham's Account of the Revolution. Apud Continuation of Mackintosh, vol. ii. It is difficult to separate truth from opinions in a conflict of parties, even when it did not produce civil war. Here the war was raging, and we must attach much to this insinuation of Sheffield, though one of the honestest of the grandeés, as times went.

Lord Halifax consented to play so mean a part. He was nominated, it appears, by the prince, as “an easy trial” of his new faith, and as an expiation of his refusal to join those who invited the Deliverer. Perhaps, continues Sir James's Editor, William had already resolved to employ him, and thought the dishonoured peer would be so much the more useful a minister.*

William was now in London; his entry triumphant, and the behaviour of his new sovereigns, the people, instructive. St. James's Palace was thronged to do him homage, as Whitehall had been thronged *the day before* to do homage to James. He rather avoided, than courted, the shouts of the populace, disgusted perhaps with their versatility: but he had equal reason to be disgusted with the mob of the court. Upon the departure of the king, Whitehall again became a desert. Those who had *flocked* to him upon his reappearance, rushed now to St. James's to make their eager court to William, exemplifying in this little of the supposed august scene of a nation resuming its suspended rights, but very much the correct estimation made of the multitude:—“An habitation giddy and unsure hath he that buildeth on the vulgar heart, O, thou fond many!”

Meanwhile, though the self-exiled king was at Rochester in his way to voluntary banishment, he was pressed by all his protestant friends still to stay, and to summon a parliament, assuring him that there was

* Sheffield Duke of Buckingham's Account of the Revolution. Apud. M.

a great turn in the minds of the city, and of the *English army*, and that pity and compassion for him then generally prevailed; what is more, Echard adds*, that it *was in a great measure true*. If so, what again are we to say of the universal feeling, the universal resolution, to dethrone him?

Could the advice have prevailed, there can be little doubt as to the event, and the Tower, probably, would have been the palace to which James would have been consigned. But if the reaction was a fact, which the Editor of Mackintosh himself seems to admit, are we far wrong in thinking this imprisonment would have proceeded more from the efforts of the Dutch guards, than the wishes or the energies of the great English people?

In his then situation James did wiser in rejecting the advice, and proceeding to France, leaving free scope to all that collision of high but discordant principles, theories, and discussions which followed, and which, though nothing new to you, but, on the contrary, long since settled in your excellent judgment, I cannot help asking you, as a proper close to these strictures, to examine.

Previous to this, however, it may not be amiss, nay, it is only justice to James, to take a glance at his famous letter from Rochester, containing his reasons for quitting the kingdom, and in so far affording an answer to the argument afterwards raised upon it, that he had made a voluntary renunciation of the throne. If his retreat was occasioned by treachery,

* Vol. iii. 340.

force, threat, or stratagem, it was evidently not voluntary, and we are but right in saying that this *national* proceeding was founded on "false pretences and perfidious arts."

"The world," says the king, "cannot wonder at my withdrawing myself now this second time. I might have expected somewhat better usage, after what I writ to the Prince of Orange by my Lord Feversham, and the instructions I gave him; but instead of an answer such as I might have hoped for, what was I to expect, after the usage I received, by making the said earl a prisoner against the practice and law of nations; the sending his own guards at eleven at night, to take possession of the posts at Whitehall, without advertising me in the least manner of it; the sending to me at one o'clock, after midnight, when I was in bed, a kind of an order, by three lords, to be gone out of my own palace before twelve that same morning?"

"After all this, how could I hope to be safe, so long as I was in the power of one who had not only done this to me, and invaded my kingdoms without any just occasion given him for it, but that did, by his first declaration, lay the greatest aspersion upon me that malice could invent, in that clause of it which concerns my son? I appeal to all that know me, nay, even to himself, that, in their consciences, neither he nor they can believe me in the least capable of so unnatural a villany, nor of so little common sense, as to be imposed on in a thing of such a nature as that.

"What had I, then, to expect from one who, by all arts, hath taken such pains to make me appear as black as hell to my own people as well as to all the world besides?"

"What effect that hath had at home, all mankind have seen by so general a defection in my army, as well as in the nation, amongst all sorts of people.

"I was born free, and desire to continue so; and though I have ventured my life very frankly on several occasions, for the good and honour of my country, and am as free to do it again (and which I hope I yet shall do, as old as I am, to redeem it from the slavery it is like to fall under), yet I think it not convenient to expose myself to be so secured as not to be at liberty to effect it; and for that reason do withdraw, *but so as to be within call whenever the nation's eyes shall be opened, so as to see how they have been abused and imposed upon by the specious pretences of religion and property.*"

Such is this famous letter; and whoever now reads it, now that the prejudices, the fears, and the excitement of the times which produced it are over, will not refuse, I think, to admit that, however we may rejoice in the *effects* of the throne's being voted vacant by a voluntary abdication, the vote itself was founded upon anything but truth.

Burnet says the facts the letter complains of were aggravated or misrepresented. In what were they so? Was not Lord Feversham imprisoned contrary to all law of nations? Would William have dared to have

done so by any messenger from Turenne or Luxemburg? Were not the Dutch guards sent without notice to surprise James at night? Was he not *forced* from Whitehall? Could he have thought himself safe? Could William have himself believed, though he pretended to do so for the better carrying on his own ends, that the birth of the Prince of Wales was a wicked imposture? If he did, why did he send an express embassy to congratulate James upon it? Anne believed it for a time; but Anne was a weak bigot (though a Protestant), as great as her father was a Catholic. The letter to William formerly cited*, admonishes him that he would lose ground by not supporting the lie, and he did support it. Was this the magnanimous deliverer, or a political trickster? In this point, at least, James will bear a comparison. He might be arbitrary, he might be a tyrant, but he was a man of honour. William landed with a lie in his mouth, and chiefly by means of that lie became king.

It is hence, I think, that what James so emphatically complains of was true. He could expect no safety from those who, knowing it to be false, endeavoured to make him appear to his subjects "as black as hell."

Do I in this defend the *cause* of James? No! but not the less do I blame our *supposed* high-minded and clear-sighted ancestors. Not the less do I re-

* Supra.

* M

pudiate being one of those wisacres who halloo one another into the thought that James was a monster, William a disinterested deliverer, and those who acted with him patterns of wisdom and public virtue.

With all my cautions in admitting, and still more in exercising, the right of resistance, I am free to say that the vote of the Scotch convention, that James "had *forefaulted* his right to the throne," was infinitely more consistent, and more worthy of the principles of liberty which have been contended for by the jurists we have been reviewing, than the jesuitical niceties and scholastic pedantry on which the palladium of our happy constitution was, at last, actually founded.

The steps by which this was produced were of a piece with the production itself. Every thing was marred and incrustured with such irregularities, such unfounded assumptions, such semblances of reality where no reality was, that the mind seems bewildered in pursuing them. We follow them with difficulty, and part from them without satisfaction. *Decies repetita non placebit.*

The prince and his followers had every thing in their power. There was not a possibility of resistance to any thing they might propose. As they had gained all, so they might have modelled all by successful force. The laws were mute; all rights at the foot of the conqueror (for conqueror he was), and as such implied to be, even by such Whig lawyers as Pollexfen and Holt, who, however blamed, no more

than consistently (I do not say wisely) advised William to assume the crown as Henry VII. had done before him. I repeat, this would not, perhaps, have been wise; but if an easy and early settlement of a distracted state betokened practical wisdom in our earlier ancestors, it is not clear that it would have been the contrary on this occasion; as, on the other hand, it would have saved us the examination of a thousand failures and bewildering derogations from reasoning and regularity, which marked the whole progress of our sage politicians, from the commencement of their sayings and doings to their final and lucky settlement.

Had this been done, in what would it have been different from the origin of many other states, governments, or usurped powers, now consecrated by time?

But though this would have been more consistent and intelligible than what was afterwards done, it could not have been without the acknowledgment of the bold right of force which our learned ancestors wished (I by no means say improperly) to evade. They resolved, therefore, to do every thing they wanted, yet pursue, as much as possible, old forms and a beaten track. Hence the incumbrances with which they surrounded themselves, and the difficulties from which (as *critics* in legislature, not practical statesmen) we are not even at this day satisfactorily relieved.

Our deliverers resolved to remedy the exigency

that had occurred through the old, known, and respected medium of a free parliament, so dear to Englishmen, and the chief object and cause of the Declaration itself. The deliverer, however, did not foresee, when he published it, all that was to happen. He did not think, perhaps, of a parliament *without* a king; and whatever his secret designs, he probably did not exactly cast beforehand how he was to get rid of the king, and yet create a parliament.

The unforeseen loss, therefore, of the presence of the king *before the parliament was summoned*, occasioned the difficulty. Was it solved? Let us inquire.

SECTION V.

MARCH OF THE REVOLUTION AFTER THE RETIREMENT OF JAMES.

WE have seen how the lords, who had assembled themselves for excellent purposes, though without character, at Guildhall, and had addressed William to advance to London, had returned to James, when James returned to *them*. We have seen, too, upon the second withdrawal of James, how instantly they returned to William.

They were now all again at his beck at St. James's; for they had laid down whatever power they had assumed, and were no longer an assembly except of individuals. Yet these, disjointed as they were, without a character, without a capacity to do any one legislative or representative act, were the first *set of people* (I do not mean to blame him) whom

William pitched upon to address *as the nation*, and ask their advice to carry his *Declaration* into effect. This, and their having gone from the palace to their own house by a sort of magic, charmed them into the belief that, instead of being some eighty or ninety titled gentlemen, they were one of the estates of the realm, lawfully assembled, by the only power which could assemble them, the king's writ.

Let us pause here to ask by what talisman, what strange metamorphose, this could be that constitutional meeting which formed one third part of the legislature; much more how it could pretend to be any part at all of the representation of the people's will, beyond the eighty or ninety units of which they were individually composed?

Yet this collection of individuals were, as we have seen, that solemn court which was supposed to be endowed with the power of *sentencing* their king on the notoriety of his acts, and would have given them power to order him to be tried, had there been "exalted *justice* and superior reason enough in the nation" to have gone through with such an undertaking.*

Hitherto we have neither heard nor seen any thing of the people, either in their collective or individual capacity, whether set free from their government, or not.

* Vide supra.

We have witnessed the march of armies, heard the sound of trumpets, and seen the struggles of contending parties; we have beheld the ascendancy of a foreign prince, and the retirement of a native king; but of any organized appearance of a people, acting numerically, or by representation, we have been in total darkness. Does the meeting of individual lords, even though they had taken possession of what they called their own house, which gave *an air* of greater independence and authority to their deliberations, does this enlighten us? Again, I say, I think not.

Certainly, if William had no right to assemble them, and they no right to assemble themselves, as a House of Peers, it was not the chamber where they did assemble that could supply the defect.

Assemble, however, they did, and whether their old walls enlightened, or their own virtue encouraged them, they assumed the port and privileges of the peers of the realm in parliament assembled. They chose a Speaker, the immaculate and consistent Halifax, and named other officers. Did this make them the *legitimate* House of Peers? still more, a constituent part of a parliament, not only to which a House of Commons was wanting, but which had never been called together by the proper authority?

Defective, however, as their construction, and

therefore their authority, evidently was, they made use of their usurpation for acts of the highest consequence to the nation. They addressed William to assume the whole government of the kingdom in his person, and, as such, to issue summonses to all parts of the kingdom for the meeting of a parliament, which they thus thought would be regularly assembled.

I entreat you to observe, that in this I am far from blaming the proceeding of the lords; for even without parliament, the peers have a known constitutional character: and if an individual peer can claim to give advice to his sovereign, much more may the whole peerage united. But this requires a real and known sovereign, and extends to *advice*, not power, though an opinion is recorded by Echard, that the peers have an intrinsic power, which, like a spring, may be kept down by the weight of the sovereign; yet, when the weight is removed, as it was here, the spring recovers its force, and resumes its elasticity.

Ingenious as this may be, where it is to be found in our books of constitutional law, I in vain seek to discover.

You will perceive, however, that I direct this criticism on the powers assumed by the peers, only against those jurists, who, waving the argument from necessity (the only real or justifiable one on this occasion), attempt more, I think, than the question requires, in

the endeavour to prove that these peers, thus assembled, were the old legitimate upper house of parliament, and acted as such.

Was it this which prompted observations as devoid of justice, as I think they are of liberality, from a democratic oracle from across the Atlantic, who seems to regard us with no friendly eye, yet is so good as to instruct us as to our constitution in the tone of a master? I mean Mr. Cooper, whom I mean any thing but to offend, when I say that I like his novels better than his law. That an American should not be in good humour with a House of Lords, does not surprise; but there is method even in madness. A democrat has a right to wish lords at the bottom of the sea; but while upon earth, and tolerated by less elevated creatures than republicans, they have a right at least to fair play. Where in history does this great person find that "The peers of Great Britain, considered as a political body, are usurpers in the worst sense of the word?" Where that they are usurpers at all? Where authority for saying the authority they wield, and the power by which it is maintained, are the results neither of frank conquest, nor of legally delegated trusts, but of *insidious innovations* effected under the *fraudulent* pretences of succouring liberty. He allows they were "the principal, and at that time the natural agents of the nation in rescuing it from the tyranny of the Stuarts; but profiting by their position, they have

gradually perverted the institutions* to their own aggrandisement and benefit. This," he adds, "is substantially the history of all aristocracies, which commence by curbing the power of despots, and end by substituting their own."† N.B. This is the exact account of the democrats of the Long Parliament. Yet as a not unjust criterion of human nature at large, it may be allowed; but a republican is the last man in the world to presume to attribute it *exclusively* to aristocracies. Mr. Cooper would do better, perhaps, to defend his democratic brethren, for their cruel abuse of power in retaining the Slave Trade, than in vituperating the aristocracy of England, who contributed so much to its annihilation. At any rate he is forced, we see, to allow the English House of Peers the merit of having been the principal and *natural* agents in rescuing the nation from the tyranny of the Stuarts, a call upon him, one would think, to demonstrate by *proofs*, an assertion which, till proofs are produced, we may consider as mere commonplace declaration *ad captandum*.

But to return to the peers of 1689. Most certainly they did not only what they might have done had their meeting been regular, but a great deal more. They, standing single, and without the support of the other house, addressed the prince, as we have before related; but as to the people, it

* Query, what institutions?

† See Mr. Cooper's work upon England.

would be most difficult to find them, except in the mobs in the street, who, from time to time, and as they thought they could succeed, used the sovereignty which had reverted to them, by making free with other people's property now without safeguard from the law, which, we are told, was annihilated.

In fact, though the interests of many leaders individually, of corporations, of the church, and of the magistracy had been talked of, and, in some measure, stipulated for, the people were wholly overlooked. Not a word was said about them or their authority collectively, either by the deliverer, or those who invited him, or the bishops, or the magistrates, or the corporation of London, or any other corporation.

These first principles of authority, this only source of power, which have been the theme of our enthusiastic admiration a hundred years after them, were never thought of at the time, much less mentioned, by any of the parties concerned.

As it was, William was hugely tempted, but at the same time embarrassed by this address of the lords. His embarrassment, however, only arose from the difficulty of dallying between accepting the offer from the lords alone, and waiting for a House of Commons to join in it.

This was unfortunate, for there were then no Commons in existence; and if the lords, who were all

personally recognised as the individuals who must form the House of Peers, when properly assembled, had no collective character, still less could any set of men pretend to be the Commons, who had all melted into air on the dissolution of the last parliament.

This was a sad dilemma; but when things, right or wrong, are resolved upon, and have power to back them, resource is not wanting.

So all the old members who had sat in any parliament of Charles II., who could *be found in town*, were ordered to assemble, and *call themselves* the House of Commons, and, by way of a Corinthian capital to this clumsy base, the aldermen and fifty common councilmen of London were brought from their shops, and ordered to assemble with them.

Does not this remind you of the Revolution in the Rehearsal, where the two usurpers enter the chamber of the two kings of Brentford, sit in their chairs, and, in the twinkling of an eye, are transformed into sovereigns? Even the author of this part of the history seems ashamed of his puppets, for puppets they were, and did as they were bid, and took possession of the Commons House, as the peers had taken possession of theirs, and chose a Speaker, the patriot Powle, one of the pensioners of Lewis XIV., and thus the two Houses called themselves Lords and Commons.

This was to William a great satisfaction, and dispelled his doubts, for they desired him to administer the government, and issue summonses for a parliament, which he cheerfully did.

In the Commons, however, there was a not unnatural anxiety to know how they came there, and how they could be the Commons of England, when none of them had been elected.

But this false modesty was soon repressed; and it was resolved that the prince's warrant was quite sufficient to salve their consciences. I need not ask what, except the sword, gave the prince a right to issue this warrant?

One member indeed (Sir Robert Southwell), had the temerity to say he could not conceive how it was possible for the prince to take upon him the administration without some distinguishing name or title.

But he was silenced by Serjeant Maynard (whom Swift calls an old rogue, and who in the Long Parliament seems to have deserved the appellation), who said they should wait long and lose much time, if they waited till Sir Robert conceived how that was possible.

But Mackintosh defends his own "spurious and motley assembly" by saying this sarcasm had "some reason; *for it would have been in vain to look for regularity where all was irregular.*" *

Thus he seems, like Jaques in the play, to have discovered that "Motley's the only wear."

* Mackintosh, vol. ii. 282.

"I met a fool i' the forest,
A motley fool, a miserable varlet —
A worthy fool; motley's the only wear.
O, that I were a fool
I am ambitious for a motley coat."

Upon the whole, if we come to consider the *lawful* authority of the meeting I have described, I see not why, if William had thrust a regiment of Dutch guards into the Commons House, and made them deliberate, as Cromwell would have done in the same circumstances, why they would not have been invested with quite as much *legal* right to be called and thought the Commons of England, as this "spurious and motley meeting."

The reasons for their legitimacy would be quite as good: "It would be in vain to expect regularity, *where all was irregular.*"

And this is the first indication we have of an appearance of a recognized power, having even a semblance of the people, being introduced on the theatre of the Revolution.

Whether this assembly had any right to be called representatives, or whether any thing it could do deserved that glorious character which we are usually so fond of bestowing upon the event, the exhibition of the solemn act of a great and wise nation, assembled before the world to pronounce, on the greatest crisis which could happen to it, the dissolution of one government, and the establishment of another, this is

a question which, from the premises detailed, we have no great satisfaction in asking. Most indubitably the PEOPLE have not yet appeared.

However, all was soon cured by this bastard meeting, engendering another, which, though also a bastard, seemed, if not legitimate, yet something more like a representation of the people, in the ordinary form.

For the "spurious and motley" by voting the prince into the government, and desiring him to summon a more regular meeting (which he did), produced the great Convention Parliament, whose first act was to vote themselves the real people, and then to dethrone James, and make William king, who then summoned another parliament, who thus, it was said, became a real one, and, by their first vote, declared the convention to be so too, with a convincing argument of pains and penalties upon all who doubted it, which was pretty much the same as Lord Peter's declaration, that whoever denied his brown loaf to be a leg of mutton, should be damned.

Previous, however, to this meeting, such as it was, of the representatives of the numerous individual sovereigns who then composed the sovereignty of England, the prince, in virtue of his delegated power from the no delegates, borrowed 200,000*l.* from the City, chiefly, as it was said, for securing the

protestant interest in Ireland. But to this purpose, or at least in the proportions contemplated by the lenders, it was not applied. Here, then, was there not an abuse? and an abuse in a king, much more in a nondescript *locum tenens*, is misgovernment; and misgovernment, as we have seen, gives a right of war. William, therefore, was in the outset, and before he became a king, a tyrant, according to all legal description of one.

For now were issued search warrants against printers and pamphleteers who had abused him, though only when in charge of the provisional government, and before things were settled by his assumption of the crown.

If any thing could have justified the most free exercise of the liberty of the press, it was surely the exigencies of such a time as this, when the very life blood of all that had been done, or was doing, depended so entirely upon public opinion. If really the Revolution was just, virtuous, and necessary, the fullest liberty to discuss it was imperative on both sides; especially by the lovers of philosophic liberty, who rested their cause upon the arguments, not the bayonets, of the Deliverer.

Yet what was the fact? Mobs were arrayed against all who differed from them, with weapons far different from reasoning, the use of which weapons also they *far better* understood. These were what, under the

guidance of the honest and just demagogues of the Long Parliament, drove the king to seek refuge in arms, and then they denounced him for taking them; and why should not the same means produce the same effect?—Sherlocke, however, had the honour to be answered not by a bludgeon, but a pen, though that pen was Burnet's. Sherlocke was dean of St. Paul's, was for recalling the king, and wrote cogently in favour of it; among other topics, he doubted the assertion of a treaty with Louis for the destruction of the protestants. "This," said he, "did more to drive the king out of the nation than the prince's army." This, therefore, ought to be examined, as, if it should prove a *sham*, as some say it is, it seems half an argument to invite the king back again.

Fearing impression from this, Burnet was ordered to reply to it, which the obsequious doctor willingly obeyed; so that the paper war raged with sufficient violence, and, as it should seem, the prince had the worst of it.

The pensionary's letter to Stuart on the subject of the tests abounded with expressions of affection, gratitude, and duty on the part of the prince and princess to the king. They declared, through Fagel, that they were resolved to continue in the same sentiments of affection and duty to his majesty, or to increase them if possible.

The passages expressing these unalterable or increasing sentiments of love and duty were selected and reprinted, with commentaries insidiously respectful, and the following memorandum appended by way of note. — "These singular expressions of affection and duty to the king their father were sent after those irregular and offensive measures of quo warranto charters, the dispensing power, closeting, the ecclesiastical commission, and Magdalen College, were practised. It is scarcely necessary to add, that these were the leading grievances urged by the prince in justification of his enterprise."

The Prince of Orange had his full proportion of pamphleteers in the field, and he was personally a sort of idol whom none dared to attack, — to whom all parties offered homage from inclination, interest, or fear. Yet the prince and his Whig advisers, who had printed in Holland, and circulated in England, the most scandalous libels upon the king, issued a search warrant, worthy of James II., the Charles's, and the Star Chamber, after authors, printers, and sellers of unauthorised books and pamphlets.

"But the proofs," continues Mackintosh's Continuator, "are numberless, and the fact indubitable, that the men of the Revolution of 1688 *were as little disposed as their adversaries, whether Tories or papists, to concede the free exercise of either human reason or religious*

conscience." † He goes on in a strain remarkable for such a champion of liberty.

"Hitherto, the assumption of a power to suspend or dispense with laws, was the main grievance specifically urged against the king, and the sheet-anchor of the designs of the prince. To these were now added the imprisonment of the bishops, and the imposition upon the nation of a spurious heir to the crown. James II. is sufficiently odious, and his deposition from the throne sufficiently warranted, without injustice or aggravation. It may be right here to pause for a moment upon these three chief heads of accusation.

"James affected to be above the law, and was therefore a tyrant. He did not, however, assume the right of suspending or dispensing with all laws, as, according to the popular notion, he is supposed to have done, but only those penal enactments which interfered with his prerogative of commanding the services of all and any of his subjects. His lawyers told him this was a prerogative inseparable from his person, which no statute could limit or invade. The same prerogative had been claimed by Charles II., vindicated by Shaftesbury, and withdrawn from operation rather than renounced. James, then, did not assert it without precedent, or without law authority.

† Hist. Revol. vol. ii. 296.

He did not assert it without appeal. He submitted the question to the competent jurisdiction, and eleven of the twelve judges decided in his favour. Such a prerogative, it is true, was equivalent thus far to arbitrary power; but this admission would only prove, *that arbitrary power had countenance from the law of England.* The judges, it will be said, misinterpreted the law from fear or favour, and were appointed for the purpose. But discarding, as a delusive phrase, the maxim, that the king can do no wrong, and holding James responsible of right, as he was held in fact, still he was not the sole criminal, but the accomplice, and, in some measure, the victim of corrupt or craven judges, and of an anomalous system of jurisprudence, which allows judges to make law under the name of expounding it. In fine, of the eleven judges who decided the case of Hales, four only were named by the king."

"To come to the case of the bishops: — they refused compliance with an order of their king, whilst they professed passive obedience to him, as a tenet of their church; and, after having in precisely the same matter obeyed the royal mandate implicitly in the late reign, they presented a petition to the king desiring to be excused. They considered their petition legal and dutiful, as most assuredly it was. The king considered it a seditious libel; committed them, in default of bail, upon their refusal to enter

even into their own recognizances; submitted the question to trial by a jury of their common country, and the verdict was against him. His proceedings, then, against the bishops, however vexatious and oppressive, were not illegal, and therefore not tyrannical. The surest test will be to suppose James, for a moment, a true son, not of the church of Rome, but of the church of England, and the objects of his prosecution, not protestant bishops, but dissenters or papists, would not his conduct be very differently viewed, though the question of its legality would remain the same? The charge respecting a supposititious heir was one of the most flagrant wrongs ever done to a sovereign or father. The son of James II. was, perhaps, the only prince in Europe of whose blood there could be no rational doubt, considering the verification of his birth, the unimpeached life of his mother, and the general morality of courts and queens.

"The imprisonment of the bishops, and imposition of a spurious heir, were put forward as the grievances which immediately provoked and justified the expedition of the Prince of Orange; but these incidents were merely seized on as favourable pretences. The prince had resolved upon it long before, and waited only for a favourable conjuncture, and was already making his arrangements in concert with the States of Holland, his allies abroad, and his friends in England.

Viewing the Revolution of 1688 at this distance of time, and with the lights of the present day, it is impossible to deny James a certain superiority in the comparison of abstract principles: his standard bore the nobler inscription. He proclaimed religious liberty impartial and complete; and had he not sought to establish it by his own lawless will,—had his proceedings been but worthy of his cause,—posterity might regard him not as a tyrant justly uncrowned, but as a beneficent prince who became the victim of an *intolerable faction*, an *overweening hierarchy*, and a *besotted multitude*.”

What are we to say to this powerful apology for James by his most determined opponent? What of the opinion expressed of the *glorious* enterprize?

Surely, if this was the real character of the Revolution, drawn by its most determined defender, those who have nursed themselves into an opinion that it was the unanimous effort of a great and enlightened nation, so deeply versed in the principles of philosophic liberty, and so alive to the infraction of those principles by their sovereign, that they rose, to a man, to assert and resume their abstract and inalienable rights,—those, I say, when they come to the facts, will probably be disappointed.

Nor will they be less so, I fear, who have conceived notions which the heart would warmly welcome, but is forced totally to reject on examination, of the pure

patriotism, contempt of danger, and generous devotion of self to the public weal, in those whom cursory readers of the common histories of the times have dignified with the characters of deliverers. I except not the great Deliverer himself; in respect to selfish views, sincerity, or a bold assertion of liberty, not less unworthy than the hypocrites who used him, as he used them, each to serve himself, under what we have seen stigmatized as *perfidious arts and false pretences*.*

The effect of late discoveries has been woeful to our national feelings and national pride. The greatest names sink to nothing; and characters we have been used almost to adore, become the sorriest knaves and veriest of pretenders that have appeared in history.

You may remember in one of Voltaire's wittiest satires upon the illusions of the world, (I think “*Babouk, ou Le Monde comme il va*,”) Babouk, at Paris, going to a celebrated tragedy, full of glowing sentiments, is so struck with the energy and pathos of the principal actress, a persecuted princess and model of conjugal virtue, that he conceives the most ardent desire to be acquainted with her, in order to offer his adorations.

Accordingly, he waits upon the princess the next

* *Supra*.

† M 12

day; and to his astonishment and horror, finds her, instead of a palace, in a sordid lodging, up two pair of stairs, living in adultery, and with child by her keeper.

I dare not apply this to our glorious Revolution or its immaculate heroes; certainly not to all its actors, many of whom charm us in the history, as the princess did Babouk.

But if we really coolly inquire into the genuine character, either of the Revolution itself, or of those who accomplished it; the manner in which it was brought about, or the duplicity, treachery, and personal views of its principal leaders, I am afraid some of our happiest prejudices will be overset, and there will be laid bare many "a mean heart that lurk'd beneath a star."

I am sorry for this, and would rather that I had not, like Babouk, undeceived myself by calling at the heorine's lodgings.

Say what we will of our innate love of liberty, of our free constitution and our Roman spirit, as they appeared in those times, it cannot be denied that they all of them nearly originated (certainly received most powerful aid) from either contemptible selfish views or the detestation of popery.

"Though the nation in general," says Macpherson, "were offended with the king, very few dreamed of depriving him of the throne.

"Their present defection arose from their apprehensions of the popery of the king, not from any aversion to the legal authority of the crown. That republican enthusiasm which had overturned the throne forty years before, was either altogether extinguished, or softened down into the more practicable principles of limiting the royal prerogative.

"A breach upon the regular succession, though perhaps the nearest way to the absolute security of public freedom, was neither understood nor desired.

"Men judged of the future by the past. A disputed title to the crown had dyed the annals of former ages with blood.

"No declaration of the legislature could alter at once the principles of mankind, or induce the nation, in general, to relinquish the first maxim in government delivered down from their ancestors.

*"Few had yet arrived at that philosophy in politics which gives its necessary weight to authority, without deeming obedience a moral duty."**

These sentiments, if they are not perfectly correct in the abstract, are so far founded on the fact, that they seem to have animated the great bulk of the people from the highest to the lowest. We know what fanaticism did in exciting and pointing the courage of the saints against Charles I., and so here,

* Macpherson, vol. i. 547.

had the nation been catholic, we should, probably, never have heard of the Revolution.

The excitement continued long after the fears of liberty were appeased.

For when a spirit of returning love for James, and the unpopularity of William, prompted perpetual inquiries into the feasibility of an invasion, a very sensible friend tells him there is no doubt his well-wishers, were it not for his popery, formed the majority of the nation, particularly among the upper ranks; but that the bulk of the people continued in such fear and detestation of his religion, that they would rather bear the oppression of William than join him.

Even Marlborough, professing to be ready to die for his master, asserts that he is still more ready to die for his faith; and that, though he cannot live the life of a saint, he is able, should there be occasion for it, to show the resolution of a martyr.* He did better, he continued to profit by the places, and betray the confidence of James while James had places to bestow,—changed sides with fortune (that guide of the base), and has left the name of Marlborough, like that of Bacon, a perpetual memorial of the excellence of human capacity and the infirmity of human reason.”†

* Letter to Prince of Orange, 17th May, 1688, in Coxe.

† Mackintosh, vol. ii. 130.

No! Marlborough was no patriot; but with grief, be it said, a base time-server, who stuck by place as long as he thought place would stick by him. Laying the ground, however, for obtaining all proper rewards, for changing sides, at the proper prudential moment; that is, when to continue where he was seemed hopeless. Hence his letter to the prince of the 4th August:—

“Mr. Sidney will let you know how I intend to behave myself. *I think it is what I owe to God and my country.*”

What! to continue in the service of James, direct his counsels, and command his troops, with a view to betray them both to James’s determined enemy?

Whatever he may say of the country, supposing him sincere, is this the way of serving God—the God of truth, the detester of hypocrites?

He goes on:—

“My honour I take leave to put in your royal highness’s hands, in which I think it safe.” (Very lucky for him that he could find any one to take care of it for him.) “If you think there is any thing else I ought to do, you have but to command me.”*

This was four months before he left James, whose confidence and pay he all that time continued to pocket; and here Mackintosh’s Continuator again

* Letter 4th August 1688. See Coxe.

well observes, "This letter, without any other testimony, would prove that he was in the confidence of the projected invasion. No zeal, pretended or real, for God or his country, can cover the infamy *of continuing* to command the troops, betray the confidence, and abuse the kindness of King James for several months after he had deposited *what he calls* his honour with James's enemy."

There is another letter of his (better known) to James himself. In this he asserts that he acted contrary to his interests; implying, therefore, that he was sincere in resting, as he did, his desertion upon his religion.

If he really did act contrary to his interests, it was a particular reason with him to be believed; for several years after, so well was his attachment to his interests known, that the Duke of Shrewsbury, writing to William in his favour, observes, "It is so unquestionably his interest to be faithful, that that single article makes me not doubt it."*

But was it really contrary to his interest to desert a falling, in order to attach himself to a rising, master? And as to his religion, with such a high principle, we must agree that he should have been long before in the court or camp of William.†

Biting, overwhelming as these observations are, it

* Shrewsbury Papers, Ap. Coxe's Marl. vol. i. 72.

† Mackintosh, vol. ii. 253.

is no more than what is deserved by this far-famed person, who, let his military reputation be what it will, can never get from under it, and is damned to eternal fame for this mode of showing his *patriotism*.

It is unnecessary, after this, to go into the several other questions in regard to his honesty; to discuss whether he wilfully gave his advice to James to quit the field, in order to ruin him, or his mean overtures to be taken into favour again, when he found that he did not succeed so well with William, who, like many other leaders of armies and parties, loved the treason, but despised the traitor. It is needless to inquire into the degrading imputations of De Torcy.

Yet Marlborough became so prominent a character in the history of Europe, and is supposed, by the glory he afterwards acquired, to have contributed so much *to the glory of the Revolution*, that it is imperative, upon the spirit of historical truth, to inquire into the extent of the credit and the lustre which he may have shed upon that great transaction.

In compliance with this duty, ought we, or not, to notice the fearful, the terrible imputations, cast upon him in respect to his designs, not only upon the personal liberty, but even the life of James?

James himself, whose testimony, Mackintosh says, is most deserving of respect, narrates that "it was generally believed" that Lord Churchill, Kirk, Trelawney, and some others, had formed a design to seize his person, and deliver him to the Prince of Orange. Father Orleans, who wrote under the eye

of the king, states it more confidently; Reresby says it was generally believed, and that its failure caused Marlborough's flight.

The bleeding with which the king was seized, occasioned this failure; and hence James calls it providential.

The king himself says nothing of the intended assassination; Coxe, the biographer of Marlborough, is equally silent; and charity, together with its being totally foreign to his acknowledged want of ferocity, in Churchill, would lead us to disbelieve it, upon any thing short of irresistible proof.

Whatever that proof, it is to be sought in the papers of Carte, published by Macpherson, vol. i. p. 280., in which appears a death-bed confession by Sir George Hewett, communicated to Carte by Mr. Malet, of Comba Flory, dated September 3. 1745, and stating that it was found in his uncle's pocket-books. The paper states, on the information of the deprived bishop of Kilmore, Dr. Sheridan, given in November, 1709, (thirty-six years before) that *several years before that* he had seen, at the old Earl of Peterborough's house, this death-bed confession of Hewett, who died at Chester, of a sickness contracted at Dundalk Camp in Ireland; which, therefore, takes it still farther back, to 1690. Thus the evidence for this extraordinary accusation had lain dormant fifty-five years before it had reached Carte.

If these difficulties are got over, and all the parties mentioned are to be believed, Hewett is held to have

said that his conscience was troubled for having assisted at a meeting of Lord Churchill, the Bishop of London (Compton), Kirk, and others, in which it was resolved to seize and deliver James to the Prince of Orange; and if Maine, the staff officer on duty, should oppose it, then Churchill should stab or pistol him.

In another paper, there is another version of it, upon the same authority (Dr. Sheridan), in which Salisbury was the place indicated where the deed was to be perpetrated.

This is again confirmed by a Colonel Ambrose Norton, who relates it upon the authority of the same Sir George Hewett, not in confession, but conversation, in which he said it was resolved to seize James when Lord Churchill was gold stick in waiting, and in the coach with him, and that if any of the papist officers should endeavour a rescue, Hewett was to shoot him; or if that missed, Churchill was provided with a pocket pistol and dagger to despatch him. "But it pleased God," says Hewett, "that his nose bled, so that he was prevented from going to Warminster."

From all this it appears, that there is a chain of five links to be gone through before the account reaches Macpherson: Carte, Mallet, his uncle, Colonel Norton, and Sir George Hewett.

These accounts may be criticised, but there is one other still more striking, on account of the consideration of the parties vouched; it is from the respect-

able Erasmus Lewis, the faithful secretary and friend of Oxford. Of him Carte writes thus:—

“Erasmus Lewis told me at the same time, (this very day, April 10, 1749,) that Lord Delamere and E. Warrington had been in the secret of the design of assassinating K. James II. at Warminster, at the review: and told it frequently, that when at the consult among them about executing it, several methods were proposed, the Duke of Marlborough said, I see plainly these will not do! I must stab him myself in the chariot as I go with him.”* Lord Delamere here, therefore, adds one more to the witnesses already enumerated.

Such is the relation of Carte; *valeat quantum*. If truth, the heart sickens to think that so black a spirit could belong to such a man as Marlborough; and yet to the truth of facts so succinctly stated, and from such various quarters, there is nothing to oppose but that Carte must have forged them. For, as we have seen, there are six other authorities cited; so that if Carte is honest, all six must have concurred, though with intervals of years, in forging and propagating the slander. That Coxe should not condescend to mention it, even though to defend his hero, may not surprise us; but that Hallam and Fox, who were no friendly critics of the duke, should pass this pointed and heavy accusation without notice, is, at least, remarkable.

* Macpherson's State Papers, vol. i. 181—184.

But though we may be loath to believe that Marlborough was capable of designing to murder his king and benefactor with his own hand; of his proved treason to his new master and his country, ending in the slaughter of his gallant fellow-soldier, the brave Talmashe and his little army, there can be no doubt.

You will perceive that I allude to his revealing to France the designed expedition against Brest; for which, if ever traitor was hanged, he deserved to be so. His biographer, Coxe, admits the fact with all its aggravation, for it was only a few days before he offered his services again to William, with whom he was deservedly in disgrace.*

The endeavour to explain it by Coxe is admirable. “We are far from attempting,” says he, “to palliate this act of infidelity; yet from the time and circumstances of the communication, we are forced to regard it in no other light than as one of the various expedients adopted by Marlborough and others to regain the good will of their former sovereign, that their demerits might be overlooked in the event of a restoration.†

In no other light!! I grieve for Coxe's ethics. For if time and circumstances can palliate crimes leading to the deaths of hundreds of brave men, what crime may not be palliated? There is this, however, to be said for the archdeacon: his apology was only

* Life of Marlborough, vol. i. 76

† Ibid.

for want of a better, which Mackintosh could have supplied him; but when Coxe wrote, he had not had the benefit of the doctrine respecting "Reformatory Revolt *," which, if Marlborough found William's government too galling, gave him a right to take arms to alter it. If so, the duke, being justifiably at war with the king, only used the rights of war to ruin him.

Does Macpherson, however, mend the case by saying the "zeal of the Earl of Marlborough for the service of the late king, or his *aversion to the reigning prince*, induced that nobleman to become, upon this occasion, *an informer against his country*." †

How mild is this way of describing one of the most infamous treasons against his country for which ever man died on a gibbet! Where was his zeal for the late king when he sold himself, or, what he called his honour, to William? Where, when, if unrefuted report be believed, he gave him false counsel in order to betray him? Where, when, being commander of his body guard, he conspired to seize him? and where his aversion to William till, from his justly bad opinion of his truth, he found he would not promote him?

Those who take the duke upon trust, or know him only as a general, would do well to consider the details of this treasonable letter relative to the design upon Brest. The minuteness of them shows

* Vide supra.

† Macpherson, vol. ii. 67.

how deep and determined was his roguery, and justifies the insertion of the whole letter.

He informs James, that twelve regiments encamped at Portsmouth, with two regiments of marines, all commanded by Talmashe, were designed for destroying Brest and the ships of war in that harbour. He owned, that success in the enterprise would prove of great advantage to England; *but that no consideration could now hinder, or ever should prevent him, from informing his majesty of all that he believed to be for his service.* He desired the late king to make the best use of the intelligence. He told him, that he might depend on its being exactly true; but he conjured him, for his own interest, to keep the secret to himself and the queen. He informed him, that Russell was to sail the next day with forty ships; and that the rest of the fleet, with the land-forces, were to follow the admiral in ten days. He had endeavoured, he said, to learn the whole from Russell; but he always denied the fact, though he was no stranger to the design, for six weeks before. "This," continues the earl, "gives me a bad sign of this man's intentions." Sackville, who transmitted the letter, formed, for the same reason, a like unfavourable opinion of Russell. He mentioned, "that the man had not acted sincerely; and that he feared he would never act otherwise."

Such is the brilliant light in which two of the greatest worthies of the Revolution appear. One, breaking all trust; complaining that the other was

not to be trusted, because not hearty enough in baseness.

Russell, let it be remembered, was one of the signers of the Invitation. Let us see what other men of judgment think of Churchill. "As for Lord Marlborough," says Hallam, "he was among the first, if we except some Scots renegades, who abandoned the cause of the Revolution. He had so signally broken the ties of personal gratitude in his desertion of the king, on that occasion, that, according to the severe remark of Hume, his conduct required for ever afterwards the most upright, the most disinterested, and most public-spirited behaviour, to render it justifiable. What, then, must we think of it, if we find in the whole of this great man's political life nothing but ambition and rapacity in his motives, nothing but treachery and intrigue in his means? He betrayed and abandoned James because he could not rise in his favour without a sacrifice that he did not care to make; he abandoned William and betrayed England, because some obstacles stood yet in the way of his ambition. I do not mean only, when I say that he betrayed England, that he was ready to lay her independence and liberty at the feet of James II. and Louis XIV., but that, in one memorable instance, he communicated to the court of St. Germain, and through that to the court of Versailles, the secret of an expedition against Brest, which failed in consequence, with the loss of the commander and eight hundred men. In short,

his whole life was such a picture of meanness and treachery, that one must rate military services very high indeed, to preserve any esteem for his memory.

"The private memoirs of James II., as well as the papers published by Macpherson, show us how little treason, and especially a double treason, is thanked or trusted by those whom it pretends to serve.

"We see that neither Churchill nor Russell obtained any confidence from the banished king. Their motives were always suspected; and something more solid than professions of loyalty was demanded, though at the expense of their own credit."*

These strictures of Hallam are not necessary to tell us how Marlborough would have used the employment he was then seeking, had he obtained it: he would have been a second Sunderland.

There is an account preserved among Nairn's papers, published by Macpherson, which, with others of the same nature, admirably describe the fidelity

* Constitutional Hist. vol. iii. 387. As for Russell, the hero, and one of the seven *eminentes*, who invited William, no baseness or infamy recorded in history exceeds his conduct in the business of Sir John Fenwick. That unhappy person, to save his own life no doubt, accused the future Lord Oxford, as well as other ministers of William, of being his accomplices in his treason in favour of James, and there is little doubt but that the accusation was founded, though not legally proved. Believe it, men of honour, if you can, that this Russell was the man to move the bill of attainder against Fenwick. Well might Hallam say, that the last was the victim of fear and revenge. Vol. iii. 399.

and honour of character of these boasts of the Revolution. It is from Floyd, a confidential agent of James, and of course of the French government. The worthy persons to be treated with by this agent, were, in addition to Churchill and Russell, Shrewsbury himself, who, it will be remembered, also, signed the Invitation. Shrewsbury was then secretary of state; Russell, admiral of the fleet, and celebrated for his valour (would we could say his honesty) at La Hogue.

Can we, without regret, add to these Godolphin?

By all these Floyd was entertained in confidential communication; and quite sufficient passed to prove that they were all knaves.

What should have made them so, enjoying or expecting all that their ambition could desire, is a riddle in human nature! The only clue that can be conjectured for it is, either the excuse assigned by Coxe, that they expected a restoration, and were unwilling not to profit by it; or they had anticipated Mackintosh, in his doctrine of the legality of a reformatory revolt.

Any way the guilt is certain, and the particulars curious.

In describing the real characters of our patriotic deliverers, the pen falters as it proceeds.

What can it say of Danby?—a burning meteor, raging in every part of the heavens: at one time the father of corruption, the scourge of honest men, the tool of a tyrant; at another, the champion of liberty.

and the right of resistance. Again, the obsequious placeman; the bribed of the India Company; twice impeached for enormous dishonesty, imprisoned for years, screened, but not acquitted, yet accomplishing the first honours of the state, which he had thus perpetually betrayed.

I need not say that, having betrayed the people when the tool of Charles, he was not true to them when the servant of William. The proofs are abundant of his tergiversation from every cause he espoused.

Having taken arms against James, and figured as one of the seven champions (for he, too, signed the Invitation), William could not hold him though he made him a duke. Accordingly, we find him listening favourably to schemes for revolutionising the Revolution, and embarking in them with the other patriots, of whom we have just made such honourable mention.* Can we wonder at the satirical ballad, said (though erroneously) to have been composed by Dryden?

“ Clarendon had law and sense,
Clifford was fierce and brave;
Bennett's grave look was a pretence;
And Danby's matchless impudence,
Helped to support the knave.”

Of Compton, the lying bishop of London (another *signer*), we have already spoken.

* See Macphers. State Papers. Hallam thinks his conduct so much against his interest, that he feigned treason himself, in order to detect it in others.

Of him, the later historian of the Revolution says, "he seems to have been a thoroughgoing partisan, ready to say or do any thing required of him by his party, his ambition, or his *safety*." He signed the Invitation, and, in the presence of King James, fore-swore, in the worst form, that of an equivocation, his knowledge and his deed. He was ready to sign any thing, like the libertine, and swear any thing, like the Jew in the dramatic *chef-d'œuvre* of Sheridan, "The School for Scandal." For these merits he was named the Protestant Bishop, and enjoyed a vast reputation.

To show how he deserved it, take another instance of his hypocrisy. Though one of the *inviters* to dethrone James, and writing full of attachment to William, he *prays* for him, he says, among other reasons, for his *usefulness* to the crown; for, adds he, "if the king should have any trouble come upon him, *which God forbid*, (to invade him with a fleet and army was, to be sure, no trouble,) we do not *know any sure friend* he has to rely upon abroad besides yourself."

At that moment he was planning the invasion with William, who must either have laughed in his sleeve at him or thought him mad. We cannot but agree to the remark upon it, that it was either a simplicity so gross that it could not be believed, or an hypocrisy to a pitch of grimace which could not be supposed even in so bold a prevaricator.*

* Hist. Revol. vol. ii. 131.

Would that I had not another failure to examine among the managers of the Revolution, who were betrayers of James rather than the defenders of the people.

It is impossible, however, in such a catalogue, to omit the name of Godolphin. "*Clarum et venerabile nomen*." A name that, for the most part, stands for integrity and public virtue, sufficiently, indeed, proved by his *later* life,—a name which Pope has consecrated in the lines, —

"Who would not praise Patricio's high desert,
His hand unstained, his uncorrupted heart;
His comprehensive head, all int'rests weighed,
All Europe saved, yet Britain not betrayed?"

But was this always so? And though, probably, no money bribe ever went into his coffers, was Britain never betrayed? was his ambition pure? In short, was his conduct, as the minister of James or Charles stainless, whatever it might have been as the treasurer of Anne? Was he true either to James or William? The answer to these questions is to be found in his cognisance and participation of the most infamous of all transactions, — the bribery, by Louis, of his master James, to enable him to govern without his people. He did not, indeed, like the corrupt and base Sunderland, take a pension of 2400*l.* a year from France, and ask for more as a price for farther treachery, but he fostered and assisted, by all the powers of his office, the iniquitous mendicancy of James. That unfortunate man, having agreed to

betray Europe to France for the lucre of gain, and received 500,000 livres as a deposit, sent the virtuous Churchill, with the privity of the virtuous Godolphin, to solicit for more. Under this degradation of both personages, take Fox's forcible description of them from Barillon. When the 500,000 livres arrived, "the king's eyes were full of tears, and three of his ministers, Rochester, Sunderland, and Godolphin, came severally to the French ambassador to express the sense their master had of the obligation, in terms the most lavish.

In another place Fox says, "Thus ended this disgusting piece of iniquity and nonsense, in which all the actors seemed to vie with each other in prostituting the sacred names of friendship, generosity, and gratitude, in one of the meanest and most criminal transactions which history records." *

Fox goes on:—"The principal parties in the business, besides the king himself, to whose capacity at least, if not to his situation, it was more suitable, and Lord Churchill, who acted as an inferior agent, were Sunderland, Rochester, and Godolphin, all men of high rank, and considerable abilities, but whose understandings, as well as their principles, seem to have been corrupted by the pernicious schemes in which they were engaged. With respect to the last-mentioned nobleman, in particular, it is impossible, without pain, to see him engaged in such transactions. With what self-humiliation must he not have reflected

* Fox's Hist. 88. 92.

upon them in subsequent periods of his life. How little could Barillon guess that he was negotiating with one who was destined to be at the head of an administration, which, in a few years, would send the same Lord Churchill, not to Paris to implore Louis for succours towards enslaving England, or to thank him for pensions to her monarch, but to combine all Europe against him in the cause of liberty; to rout his armies, to take his towns, to humble his pride, and to shake to the foundation that fabric of power, which it had been the business of a long life to raise at the expense of every sentiment of tenderness to his subjects, and of justice and good faith to foreign nations. It is with difficulty the reader can persuade himself that the Godolphin and Churchill here mentioned are the same persons who were afterwards—one in the cabinet, one in the field—the great conductors of the war of the succession. How little do they appear in one instance, how great in the other!" †

As it was not Mr. Fox's design, in his history, to go farther than James, he did not pursue Godolphin into the reigns of William or Anne. Had he done so, his eloquent regrets at his lubricity (to call it by no harder name) would not have been appeased even by the splendid reputation which latterly belonged to this doubtfully charactered earl. With all his fair seeming, we might say to him, as the Duke

† Fox, 96.

* N 10

of Lerma to Gil Blas, that he exhibited a little of the piccaroon. As to his attachment to liberty and revolutionary principles, it is notorious that he supported or gave the countenance of his office to all James's measures, and, in particular, concurred in the prosecution of the bishops. That he betrayed James to William we have seen; that he afterwards betrayed William to James, in the affair of Brest, has been equally stated. That he was in correspondence with the Pretender during the time of his glory under Anne is not to be doubted. Yet Burnet says of him that "all things being laid together, he was one of the worthiest and wisest men that has been employed in our time;" and, when he died, adds, that "he was the most *uncorrupt* of all the ministers of state he had ever known." After what we have seen, that is not saying much. While employed as commissioner to William, where was his love of liberty when he wrote his advice to the king to retire? This might have been right or wrong; but mark the reason. He assured him that his subjects would, before a year, *invite him back upon* their knees. The king took the advice, and was ruined.

Perhaps this was a mere error in judgment; but that judgment was too clear to believe itself sincere; and we may observe that, *if* sincere, he could never have been the friend of the people. It was the very advice charged by Burnet, and also by William's partisans, as a crime upon the Catholics and the queen. More probably, thinks

Sir James, that, as he was accused, long before, of betraying the counsels of James to the prince, his object must have been to remove him out of the way of the course the prince was pursuing. Either way he was not true; if he was playing the prince's game, he was false to his master; if sincere to his master, false to the revolution. When afterwards he was the leading minister of Anne, he joined with his precious father-in-law, Marlborough, in correspondence with the exiled family, having before joined him when both were in the service of William, in betraying the expedition to Brest.†

I grieve at all this: the characters of our great statesmen and supposed patriots have received irreparable wounds by the publications of modern times. Their private lives, their secret motives, are brought to light, as if dug out of the ruins of a moral Herculeum. I would rather have remained in illusion and ignorance, like Horace's madman.

"Pol! me occidistis amici, non servastis.

Can we wonder at the complaint of Macpherson, who, in the course of his inquiries, though granted access to public papers, was generally refused the aid of private records? "Men who have become distrustful," says he, "of the principles of their ancestors, are interested in their reputation. With a preposterous show of attachment to their progenitors, they

† Coxe's Marlborough, vol. i. 76.

seem to think that to *conceal* their actions is the only way to preserve their fame."*

And here I would make a close, but that the great Deliverer himself claims "our meed of praise," not, I fear, without alloy. Yet was he so great in most things; so profound in his views; so vast in his designs; so ardent and determined, and yet so cool and wary in their execution, that both wisdom and heroism at once seem to belong to him. Every thing he did, every thing he wished to do, was grand. The mere first magistrate of a comparatively not powerful state, nothing less than Europe itself, formed the scope of his operations. When his country despaired, and in the eyes of every one seemed lost, he uttered that gallant and patriotic sentiment, "We will die in the last ditch." For this alone he would have been immortalised by Plutarch, and ranked with his most dazzling characters. In creating and organizing the league of Augsburg, where kings, and emperors, and a pope himself played a subordinate part, he displayed a governing mind for which the same Plutarch would have set him at the head of his sages. In truth, if greatness is shown by doing the greatest things with the smallest means, he was in every sense not merely great but the greatest of his time.

And this will account for what seems the most astonishing part of his character and his history,

* State Papers, vol. i. 8. Introduction.

that his attempt upon England, one of the most stupendous designs that history records, was only secondary,—only subservient to his vaster object of humbling Louis XIV., the Philip of Europe. That the mere director of a small federal commonwealth, his own power by no means unembarrassed, but clogged with many opposing interests, should conceive and execute the design of dethroning a great king in the midst of seeming despotic power, with a fleet, an army, and a treasury at his command, and that he should do this not as an insulated or final object, to end in himself, but merely as ancillary to one much greater,—not as a means to deliver England, but as an end to liberate Europe! This seems unparalleled; yet all was conceived by almost his single head, and executed by almost his single arm. The attempt alone would place him in the very first ranks of the Temple of Fame.

But though, with a view to the great field of Europe, where he reaped nothing but glory, this character of him is incontestible, did he really, in regard to England, and his love for English liberty, merit the title we are so glad to bestow upon him of our *glorious* Deliverer? Deliverer he was,—but was he in this point glorious?

In part we have already answered this in the partial notices we have taken of him, by which it should appear, beyond all doubt, that he was as hypocritical as daring; that his high, his magnificent views were kept from the open light of day, by

dissimulation, and something worse; for no one can deny that wilful and deliberate falsehood formed one of the bases of his Declaration.* All now agree that pretending to rescue a country from the chains of another prince, he only wanted to impose upon it his own; and that he sought his grand object by mean deceptions of those he had to manage, and became the pander and encourager of a faction, rather than the generous ally of a nation of freemen.

Such, I am bound to say, the same history which proclaims his elevation demonstrates, with equal truth, to have been the littleness of William. In particular, the deceptions practised on the kings his uncles, one of them his father-in-law, whose subjects he was seducing, while he denied all sinister views upon them, stamp him with a stain not a little resembling dishonour.

We have seen in one of his letters written by his orders on the subject of the Test laws, only a few months before the invasion, that he and the princess considered themselves bound, both by the laws of God and nature, to show profound duty to James.

Upon this we agree in the following observation:—"The Revolution, *as between James and his subjects*, requires no justification; but the relations of father and children between him and the prince and Princess of Orange are essentially distinct, and the

* Can we suppose him to have anticipated a modern discovery in political lying, that it is a *postponement* of the truth to serve a temporary purpose?

obligations, which in this sentence they so solemnly avow, contain, perhaps, the strongest case which could be made against them by their enemies."*

But in regard to William's treachery to his father-in-law, cases multiply. The infamous Sunderland was in his pay, and, it should seem, he was in some degree the author of the measures that made James unpopular. To encourage his zeal for popery was to ruin him, and this service, according to Macpherson, was performed by Sunderland with a *strange kind of fidelity*. Sidney his uncle was sent to the Hague to facilitate their intercourse; and while William encouraged James in his most imprudent and arbitrary schemes by means of Sunderland, he kept Dyckfelt his minister in England to promote revolt.†

Long previous to this, in 1681, we have a sort of profession of faith from William, with which his actual conduct afterwards is irreconcilable, consistently with honour.

It seems at the crisis of the Exclusion Bill (which, as we have seen asserted, the prince approved) a conference was held upon it between him and his uncle Charles II., of which Seymour, Hyde, and Conway were witnesses. The particulars are curious.

* Mackintosh, vol. ii. 134.

† Macpherson, vol. i. 477. He cites the *Life of James and D'Avaux* for this, and it falls in with the general character of his proceedings. The guilt of William, however, is here so particularised, that it would have been better if the details of the proofs had been given.

The prince had desired assistance against France, or Flanders would be lost. "When the prince had finished, the king asked, whether a parliament meeting on no better hopes of agreement than the last, would contribute to the support of his allies?"

He desired him to consider their demands, and to give fairly his opinion, whether these demands should be granted. He asked him, whether he would advise the exclusion!

He replied, that he *abhorred* the thought.

He inquired whether the prince would propose limitations.

"The crown must not be tied," replied the prince.

"Ought I to place the militia, the sea-ports, the judges, out of my own power?"

"I shall never advise that measure," said the prince.

"Shall all the ministers and officers suspected to be the Duke of York's creatures be removed, and confiding men, true Protestants, be raised to their place?"

The prince said, "he disclaimed it all." "These," resumed the king, "were substantially the demands of the two last parliaments; and if a parliament is necessary, I desire you to propose somewhat toward a better agreement." The prince replied, "that he knew things only as they were mentioned abroad; but that he understood not their real condition at home." Being pressed to propose some plan, he desired time to give his answer.*

* Macpherson, vol. i. 366.

Another case of deceit seems still worse than this.

The prince assured the emperor, in a letter a short time before he sailed, "that whatever reports may have been, or might be, circulated to the contrary, *he had not the least intention to injure the king, or those who had the right of succession*; and still less to make any attempt on the crown, or wish to appropriate it to himself." This was both a direct, wilful, and deliberate falsehood; and a paltry equivocation. As far as regarded James I., we have seen it was a glaring untruth; as regarded his son, a still meaner equivocation: for, though he might explain, if pushed, that, in *his opinion*, the child was supposititious, and, therefore, was not meant to come within his notion of the right of succession; yet, as he knew the emperor was a bigoted Roman Catholic, Mackintosh holds (probably rightly) that he was interested for the son of James as well as himself, and would construe the words so as to include him.

Another charge is of a deeper die; for as early as the Exclusion Bill, full five years before the invasion, he had machinated with those who favoured it, "and it would appear, by a letter from Montague to him, after he became king, that he *knew and approved* of the Rye House Plot."* If this be so, two important inferences arise from it; extreme guilt on his part, and the total refutation of the doubts which

* *Supra.*

* o 2

almost all extreme Whigs pretend to throw over the existence of that plot.

Ever dissembling, yet ever pursuing, his great object, the crown of his father-in-law, under whatever disguises, his negotiation with the pope himself, to incline him against James, is a consummation of art.

The pope (Innocent XI.) was the enemy of Louis, and so far was inclined to the prince's designs; but the interests of the papists in England interfered. With uncommon adroitness William outwitted the holy father, even in this. Through his friend, the prince of Vaudemont, whom he sent to Rome for the purpose, he explained to his holiness, that he was wrong to expect any advantages to the catholics in England from James; because, being a declared papist, the people would not support any of his measures. But *for himself, should he mount the throne*, he might take any step in their favour without jealousy; and would certainly procure them toleration, if the pope would join the emperor and king of Spain in favouring his attempt. What is surprising, this thin veil blinded the holy father, and our great Deliverer, who certainly never afterwards thought of his promise, obtained money from the Roman church for the express purpose of dethroning a Roman catholic king.*

I pass by the numerous evasions by which he

* Macpherson, vol. i. 495. He cites the MS.

parried his father-in-law's reiterated demands, that he should not encourage the English malcontents, who all flocked to him, and were all entertained and protected. I cannot pass a proceeding, more, indeed, appertaining to the morals of private life than to public conduct, but yet so obviously the effect of a deep political scheme, for the sake of which he stooped to a degradation both of himself and his pious consort, that it ought to be mentioned. Had it been in France, under the regent or Louis XV., it might have carried no scandal with it; but William, and still more his wife, were, or pretended to be, of the strictest and most exemplary behaviour in all the decencies and duties of religion: who then could believe that, in order still more to conciliate the Duke of Monmouth, one of his most useful tools in intriguing with England, he obliged the princess to receive with uncommon marks of honour the lady *publicly* known as Monmouth's mistress; and, though of a most jealous disposition, to receive visits alone from Monmouth himself?*

Where he complied with the requisition of the Lords, and their motley compeers the *ex-commons*, to take upon him the government, he descended to the merest coquetry.

How unworthy a magnanimous Deliverer who had armed and come from far for the very purpose!

* D'Avaux, ap. Macphers. i. 437. The lady was Lady Harriet Wentworth.

He affected to say the thing was a matter of weight, *and must be considered*; that thing which had for years been the object of his ardent longings; for which he had for years been laying the ground; and for which for years he had sacrificed his private character for openness and honour.

However he soon found that whatever was the weight, he was able to bear it, and *accepted* the offer; "*affecting* to confer an obligation, by taking upon him a laborious trust in the sovereignty of the English nation, the first object of his ambition, and of his life."

By some it was said that the offer, even though made by turn-coat peers, and his own spurious progeny, the temporary commons, was thought to have been tardy in coming. Sheffield says, they were quickened by the presence of Schomberg's troops, and also by a murmur that went about, "that the city apprentices were coming down to Westminster, in a violent rage, against all who voted against the prince of Orange's interest. There appears, indeed, no ground to suppose that the prince *directly* suspended over their deliberations the terrors of his army or of the populace; but it is far from being equally probable that the benefit of these terrors was not felt on that, and *employed* on other occasions. The fury of the rabble was soon regarded as a *familiar engine of policy* to promote the objects or interests of the prince. *It was associated with the policy of William, both in Holland and in England, by*

an odious by-word so well understood as to be employed in a document signed by five prelates. Referring to the author of a libel upon them, they say, 'he (the author) barbarously endeavours to raise in the English nation such a fury as may end in De Witting us, — a bloody word (they add) but too well understood.' *

These sad instances of a falling off from honour, but for which the character of William would have been perfect, must still be increased by one transaction more, which will sufficiently demonstrate how little he cared for the cause of England, except as it contributed to his own views; I allude to his consent in negotiating the peace of Ryswick, to the abandonment of all that he had professed to be his object in assuming the crown; namely, delivering the country from a family of papists, and the disgrace of a spurious heir.

It is remarkable, that none of the contemporaneous historians knew, or, at least, have mentioned this, although James himself has recorded it in his life, — strange that it should have taken a period of seventy years before it was published to the world! The account by Macpherson is as follows:—

"While negotiating the peace, the two hostile armies lay opposite to one another in the neighbourhood of Brussels. The Earl of Portland, on the part of the king of England, and De Boufflers, in the name of

* Hist. Revol. vol. ii. 284.

Louis, met between the armies and held a conference in the open field, on the tenth of July. They met again on the fifteenth and twentieth of the same month, in the same manner; but, on the twenty-sixth of July and the second of August, they retired to a house in the suburbs of Hall, and reduced to writing the terms to which they had agreed in the field. The world have hitherto been no less ignorant of the subject of these interviews than Europe was then astonished at such an uncommon mode of negotiation. As William trusted not his three plenipotentiaries at the Hague with his agreement with France, mankind justly concluded that a secret of the last importance had been for some time depending between the two kings. Time has at length unravelled the mystery. Louis, unwilling to desert James, proposed that the Prince of Wales should succeed to the crown of England, after the death of William. The king, *with little hesitation*, agreed to this request. *He even solemnly engaged to procure the repeal of the Act of Settlement*; and to declare, by another, the Prince of Wales his successor in the throne.

“Those who ascribe all the actions of William to public spirit, will find some difficulty in reconciling this transaction to their elevated opinions of his character. In one concession to France, he yielded all his professions to England; and, by an act of indiscretion, or through indifference, *deserted the principles to which he owed the throne*. The deliverance of the

nation was not, however, the sole object of this prince. Like other men, he was subject to human passions; and, like them, when he could gratify himself, he served the world. Various motives seem to have concurred to induce him to adopt a measure, unaccountable on other grounds. The projected peace was to secure the crown in his possession for his life. He had no children, and but few relations; and those he never loved. The successors provided by the Act of Settlement he either despised or abhorred; and he seems, hitherto, not to have extended his views beyond the limits of that act. Though James had displeased the nation, he had not injured William. The son had offended neither; he might excite compassion, but he could be no object of aversion. The supposed spuriousness of his birth had been only held forth to *amuse the vulgar*; and even these would be convinced by the public acknowledgment intended to be made by the very person whose interest was most concerned in the support of that idle tale.”

These reflections of Macpherson seem so just, that nothing need be added. They confirm, in an eminent degree, all that I have ventured to hazard on the defective side of the character of a man who, but for these defects, would have been as great and glorious as we wish to consider him; and who, as it was, was, as I have allowed, the greatest of his time.

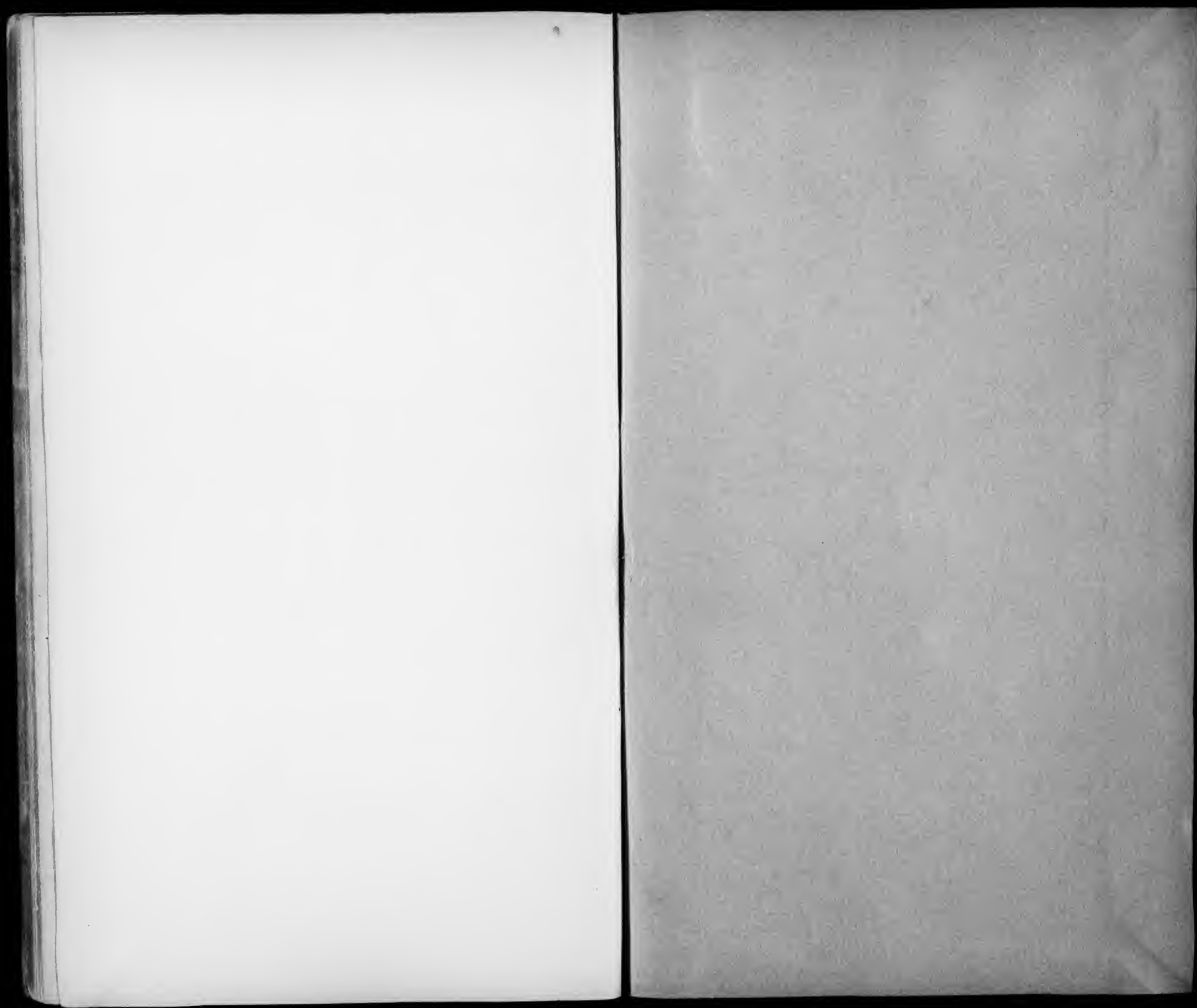
He, has, perhaps, detained us too long from the concluding scenes of the Revolution; with which, and the reflections they prompt, I will close these strictures, already, I fear, too long.

NOTE.

In page 63. no notice is taken of the unjustifiable design of the officers, as far as it went, to coerce the parliament by marching to London. It is passed in silence, not only because it was never conceived by more than the three or four officers who canvassed it, but because no proof whatever beyond the assertion of those who answered their own purposes by it is given that it was with the privity of the king. His privity was confined to the *petition*, which he certainly approved, and who can either blame or wonder, whatever its prudence?

END OF THE FIRST VOLUME.

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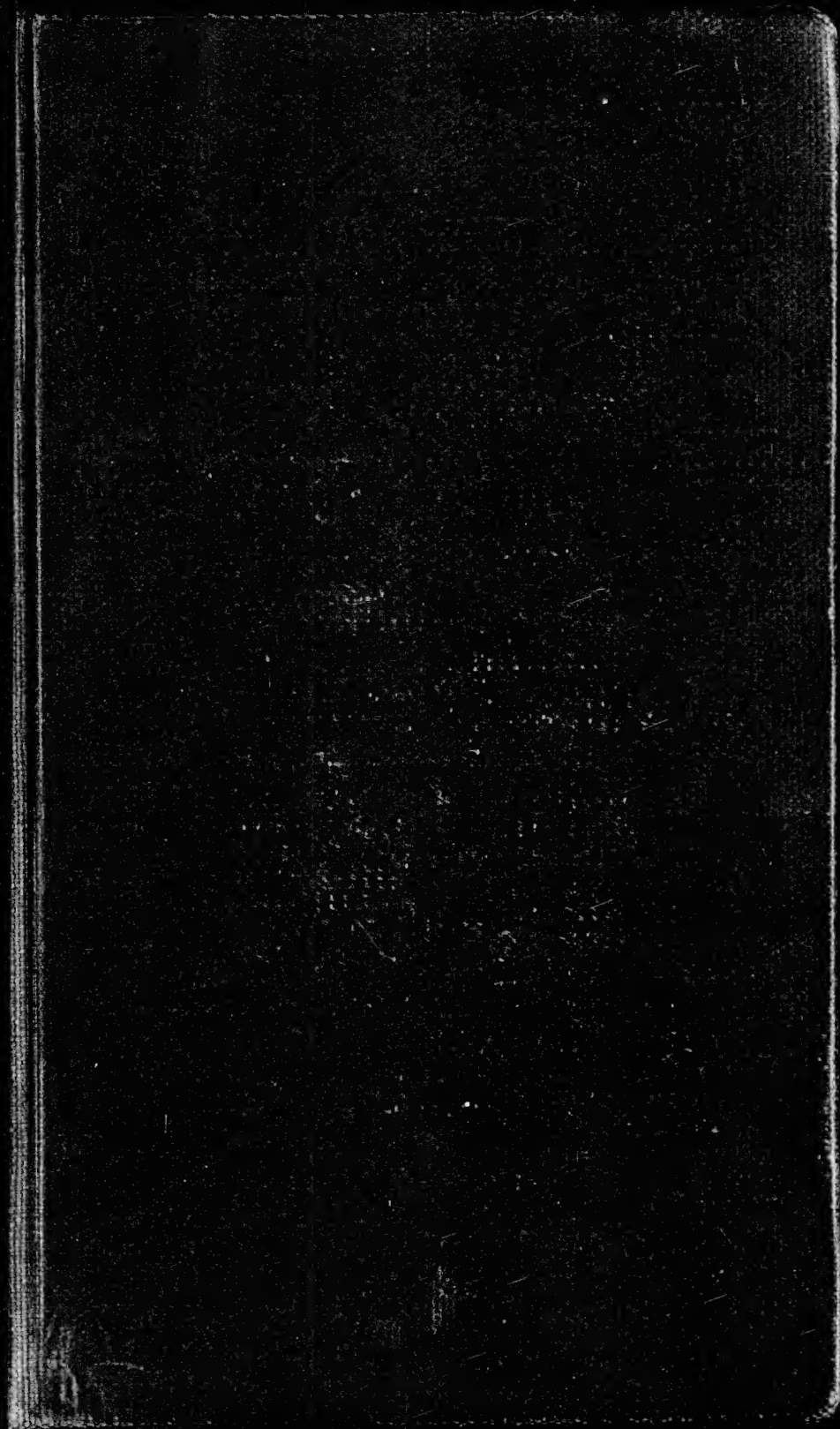
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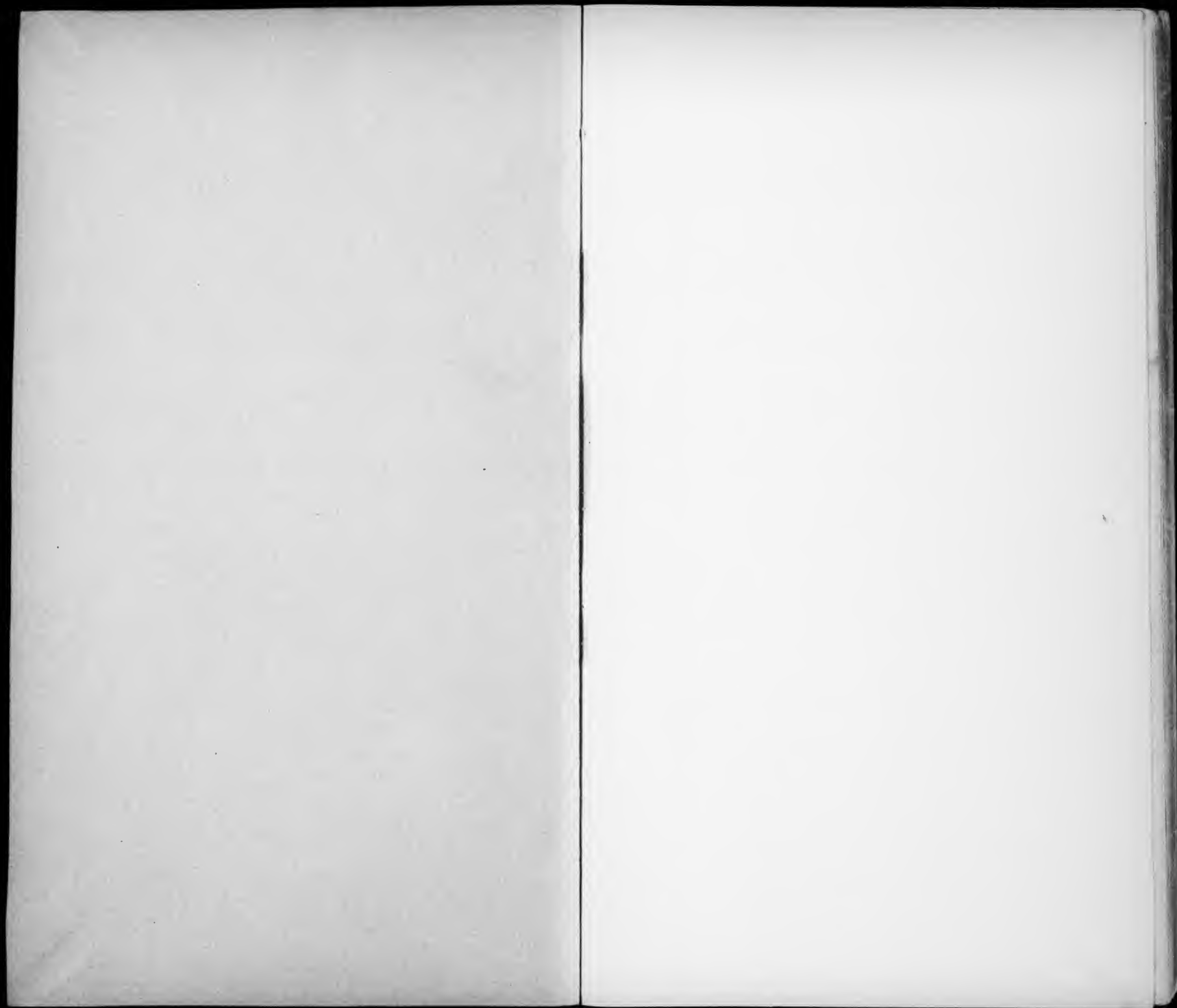
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AN
HISTORICAL ESSAY
ON
THE REAL CHARACTER AND AMOUNT OF THE
PRECEDENT
OF
THE REVOLUTION OF 1688:

IN WHICH THE OPINIONS OF
MACKINTOSH, PRICE, HALLAM, MR. FOX, LORD JOHN RUSSELL,
BLACKSTONE, BURKE, AND LOCKE,
THE TRIAL OF LORD RUSSELL, AND THE MERITS
OF SIDNEY,
ARE CRITICALLY CONSIDERED.

ADDRESSED TO
THE RIGHT HONOURABLE CHARLES WILLIAMS WYNN,
M.P. FOR MONTGOMERYSHIRE.

BY R. PLUMER WARD, ESQ.

AUTHOR OF "TREMAINE."

Opinionum commenta delet dies,
Naturæ judicia confirmat.

IN TWO VOLUMES.

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AN

HISTORICAL ESSAY,

&c. &c.

SECTION VI.

DEBATES IN THE CONVENTION.

It is by no means either my intention, or my wish, to tread over again a road so beaten, as that which led to what I may call the finding of the Convention Parliament upon the case of James. The arguments, pro and con, in respect to a king *de facto*, or *de jure*; the expediency of creating a regent, or establishing another monarch in his own right; the differences of opinion between the Lords and Commons upon the many important branches of the original great verdict of the latter, which, at length, they carried: all these are too well known to be more than referred to.

But the real amount of the precedent established;

the inferences fairly to be drawn from it, and the doctrines raised upon it by those who voted it, compared with those of its modern expounders; although in a great measure already canvassed, we may, at parting, be allowed to sum up.

If it had not already been accomplished, as we went along, I should wish to dwell still upon the sources of authority upon which those who assumed to pronounce so mighty a judgment felt themselves empowered to act.

I have called the Convention the bastard of a bastard. I still think it was so. I, at least, under all its metamorphoses, its bolstering, its plastering, its visors, its jury masts, see not the real people, or their real representatives in the two assemblies which gave us (nor am I ungrateful) our present excellent constitution.

There is an old saying, more true than polished, that "no pains will wash a blackamoor white." Ten thousand votes of an after Parliament would not, in my mind, give legitimacy to the Convention as the real people of this land. It is the old story of the world, the elephant, and the tortoise; what supported the tortoise could never be made out.

That the Convention assumed and exercised a power by which (no matter whether true or false) they declared that James had abdicated his throne, which was thereby vacant, and that they filled up the vacancy with William; to which, after some severe contests in argument, and still severer in the field,

the whole nation, at length, submitted; — all this is clear, as well as that we are now bound by it. But that the assembly which did this were the legitimate Lords and Commons of the realm, endowed with powers from the people to do it in their name; or, in fact, that they were any thing more than what they called themselves, a *Convention*, which means merely a meeting of persons who took upon themselves to risk what they did, and trust to their fortunes afterwards; I cannot be persuaded.

To try this, let us suppose that James had succeeded in any of his projected invasions; suppose William, instead of conquering, had been conquered at the Boyne; not only that Ireland, but England, had been recovered, and that James had returned in triumph to London! We have seen what his unexpected return had before effected when, though he had been a prisoner, robbed, insulted, and given over for lost; though his rival with his army was within twenty miles of him, and had even been addressed by the Lords, and all the magistracy of the metropolis to take possession of it, with a promise to support him as their refuge; — yet, in one little day, without arms, without attendants, with no support but his kingly character, he was received with acclamations by the populace, submission by the authorities, and more than the usual portion of respect from his court and council.

Was there any form adopted for this? any rescinding of votes; any solemnity of retraction of what

had been done against him, to enable him to resume his powers? No! he had only to appear, and was king again. Ay! as far as submission went, "every inch a king."

A republican will say he was but a "king of shreds and patches;" but that is as it turned out, when force was again applied. It was not the *law*, but the sword that made him so; and this incident is an illustration not less strong, on that account, of the position I am laying down.

That position is that, notwithstanding the all-deciding vote of the Convention as to compacts and the violation of compacts, the abdication and the vacancy of the throne, notwithstanding the choice of William to fill it, and even the oaths of allegiance and the Bill of Rights; had James been able to return to his kingdom without conditions, as Charles had done before him, he would, as Charles had done, or as he himself did on his return from Feversham, have remounted the throne, and resumed his kingly office as a thing of course, without rescinding in form any of the votes or acts of the Convention declaring his forfeiture. In this he would have resembled his ancestors of York and Lancaster, who, as they alternately were successful, resumed their lost power, and used it to make or abrogate laws as they thought fit.

I have mentioned the return of Charles. This is most important as a precedent. The manner of it implies much. He and all his race had been over-

whelmed by proscriptions. Vote after vote had passed under every ruling power in the state for the time being, by which one would have thought it impossible for a Stuart to exist in safety, much more to reign. There was a parliament actually sitting, in which, as to form, was vested all the sovereignty of the nation. It is usual to say, they *recalled* him. That is a mistake. In point of form (I do not say in substance) he recalled himself. The nation was distracted; they knew not what to do. They longed for his return to heal their disorders. This makes no difference in the argument; no more than that the *form* of his restoration, by which I mean the march of his proceeding, was contrived by Monk and others beforehand.

See, however, what the Lords and Commons themselves published to the world in the proclamation which, *upon a conference held* for the purpose, they agreed to issue. The form and wording of it are of the last importance in regard to the doctrine to be founded upon it.

"Although it can no way be doubted but that his Majesty's right and title to his crown and kingdoms *is and was every way completed by the death of his most royal father* of glorious memory, *without the ceremony or solemnity of a proclamation*; yet, since proclamations in such cases have been always used, to the end that all good subjects might upon this occasion testify their duty and respect; and, since the armed violence, and the other calamities of many

years last past have hitherto deprived us of any such opportunity whereby we *might express our loyalty and allegiance to his Majesty*: we, therefore, the Lords and Commons now assembled in parliament, together with the lord mayor, aldermen, and commons of the city of London, and other free men of this kingdom now present, do, according to our duty and allegiance heartily, joyfully, and unanimously, proclaim, *that immediately upon the decease of our late sovereign lord King Charles, the imperial crown of the realm of England, and of all the kingdoms, dominions, and rights belonging to the same did, by inherent birth-right and lawful undoubted succession descend and come to his most excellent Majesty Charles the Second, as being lineally, justly, and lawfully next heir of the blood royal of this realm; and that by the goodness and providence of Almighty God he is, of England, Scotland, and Ireland the most potent, mighty, and undoubted King; and thereunto we most humbly and faithfully submit and oblige ourselves, our heirs, and posterity for ever.*

*"God save the King."**

Such were the opinions of persons who had many, or most of them, concurred in dethroning their king, proscribing every branch of his family, and ruining the monarchy to its foundations. For, if ever a total subversion of one constitution and the setting up of another had been completely effected, and all return guarded against by the most solemn and deliberate acts, it

* Chandler, i. 10.

surely was this. It was fortified, too, not merely by a ten years' acquiescence and obedience by the bulk of the nation, but by two great and successful wars with Scotland and Ireland; by the most lawful adjudications of courts of justice; the change of the whole magistracy, and the relentless support of the public executioner.

What then could produce this wonderful change? this return to all the old homely doctrines of the Constitution?

One would suppose nothing but acts equally solemn and formal, rescinding all former acts, and proceeding by some *new* election of the whole nation to recall Charles, and place him upon a throne which would be thus of his own acquiring. Did the Convention then write to him? No; he wrote to *them*; and he wrote as their king, claiming the throne as a right "*which God and nature had made his due.*"*

Did they answer that his right had passed away by a thousand votes of the nation or their representatives, but that they would rescind them all, and elect him anew? No! besides the proclamation, in their own letter to him they allowed his right, acknowledged him their sovereign as if his power had never been interrupted, and hailed his return without any conditions. They began by calling him their "most royal sovereign; they trusted, and, *in all humility*, were bold to affirm that *his Majesty* would not be de-

* Declaration from Breda.

ceived in them, and that they would never depart from that *fidelity* which they owed him, that zeal which they bore to his service, and their constant endeavour to advance his honour and greatness.*

They disclaimed, too, in the name of the preceding parliament, the violence which had been done to the sacred person of his father, which they laid upon a few *ambitious* and *bloody* persons, not on a parliament which had vowed his defence.

But the miraculousness of the change, as also the evidence that no new election or recall of old proscription was necessary to make him remount the throne, is most pointedly to be collected from the speech to him of Denzill Holles, one of the most active and leading members of the Long Parliament, who began the war against his father, and who, be it remembered, was, therefore, one of the five whom Charles attempted to arrest in person, in the midst of the House of Commons. This great champion of the people, at the head of a deputation of the House, sent to Charles at Breda, addressed him as their *dread sovereign*, said that they prostrated themselves at his royal feet by command of those who sent them, who would all be there in person, but that the duty of their offices and of his service demanded them elsewhere; that never parliament made greater demonstrations of zeal, affection, and loyalty to any of their kings than this; their hearts were filled with

* Answer to the Declaration from Breda.

reverence of him; longings for him; confidence in him; "your majesty," he added, "cannot imagine nor can any man conceive it but he who was present to see and hear it, with what tellings out of the soul a stupendous concourse of people heard the proclamation, 'proclaiming you to be our most potent, mighty, and *undoubted* king.'" Finally, he was the light of their eyes and the breath of their nostrils.*

It may be said that this was all management; that the Commons might have made what conditions they pleased; that the king was at their mercy. No matter: they did not make those conditions; and, without even glancing at the different modifications of the constitution, which had all received the nation's sanction for ten years together, they received him, with all his prerogatives entire, without any new investiture or solemn abrogation of the votes against his family.

The mode in which the House of Peers, which had been voted useless, was restored, was curious. One morning they found the doors of their chamber open; and ten or a dozen walked in as if nothing had happened, took their seats, and began to vote.

So I hold, it would have been with James, or James's son, had he conquered a restoration or been

* Chandler, i. 13. The whole speech is such a wonderful elucidation of the vicissitudes of history, that I have set it forth in the Appendix, No. II.

admitted without opposition; and if so, the validity of the acts of the Revolution Convention would have been not so much destroyed by fresh votes, as passed by without notice, as if they had never been.* Could this have been, if really these acts had been the work of the people at large, resuming their trust, as Locke thinks, or their inalienable rights, as Mackintosh holds? No! As there must have then been a return to the individual personal sovereignty of every man composing the nation, in order to delegate it to a new family, as these jurists have supposed they did, so if they had chosen to renounce the new family and return to James or his heir, whether forced to it by conquest or receiving him by choice, a *new* election and a previous abrogation of the preceding one would have been necessary.

But with *usurped* power, such as that of the Long Parliament, or such a defective and irregular assumption of it as by a convention to produce a convention such as we have described, no such new election would have been required. The proclamation (say for the son of James) might have pursued the same tenor as that for Charles, and it would have been bruited by the sound of the trumpet, "that immediately upon the decease of our late sovereign lord King James II., the imperial crown did, by inherent

* The steps by which Charles II. resumed the throne, (I use that word as more appropriate than *restored*;) it is very material to consider: for the sake of convenience, therefore, to those who think them worth examining, I have thrown them into the Appendix.

birthright, descend and come to his most excellent majesty King James III."

Had the parliament, indeed, been lawfully convened by James, who alone had the lawful right to summon it, and he had then *really* abdicated his throne, the power of remedying the evil by filling up the vacancy, would have devolved upon both houses, as of course, and they would only have used their power constitutionally and according to precedent; but, in the Convention, which really met on an emergency created by the sword, and unauthorised except by that sword, I see nothing but a *provisional* government, to be afterwards confirmed by the *people*, but not as was emphatically the case, by *themselves*; who thus, as before alluded to, were the tortoise that supported the elephant that supported the world but was itself supported by nothing.

Do I say that we of the present day are not bound to this, by not merely the municipal, but the moral law? Certainly not.

There are two ways, and two only, I think, by which power can be derived from the people: either by their actually assembling and enacting the mode in which it shall be administered; or by long acquiescence and obedience (no matter how the power was acquired) confirming and ratifying it as if it had been originally their free choice.

Of the first, the election of Pharamond to be king of the Gauls*, the creation of the American States,

* He was elected by his army, who placed him on a shield, and

and those semblances of unrestrained elections, by which Bonaparte acquired the different gradations of his power, may be considered as instances. Of the last, almost all the governments of Europe as now derived:—the Carlovingian and Capetian kings of France, who erected new dynasties, and our own line from the Norman and Saxon families, none of whom had any right but of the sword when they conquered the Saxons, the Britons, the Normans. Hence the sentiment of Blackstone, that “the executive power in England is vested in a single person by the general consent of the people, the *evidence of which general consent is long and immemorial usage.*” Hence, also, he says of King Egbert, that he found himself in possession of the throne from an undisturbed possession by his ancestors of 300 years, whether by force, fraud, or election it matters not to inquire. His right must be supposed indisputably good “*because we know no better.*”* As to William the Conqueror, or, as the lawyers wish to consider him, the *acquirer* (for that they say is the meaning of *conquestor*), he had no right from the will of Edward the Confessor (the one he pleaded), because “*absque generali senatus et populi conventu et edicto*†;” and though the Saxon line was held to be restored in the person of Henry II., yet as that made no difference

showed him to one another as their king. But the army was the people, who were all soldiers.

* Commentaries, i. 190. 195.

† Ibid. 198.

in his claim, which was ostensibly derived alone from his Norman grandfather Henry I., the whole Norman title, through all the Plantagenets, seems in reality to have been of the nature of that we are describing, an acquisition, whether by the sword or otherwise it is too late or unnecessary to inquire, because deriving its best force from long acquiescence and regular usage.

Such, if I may be allowed an opinion for all the reasons adduced, I hold to be the *real* source of our present happy government. I say *real* source because, disguise it as we will and with whatever exertion of ingenuity or semblance of law authority, although we are all bound by the laws establishing the changes made at the Revolution, and although we should justly incur both the guilt and punishment of treason if we warred against them; that they were derived originally either from the people in their collective state or through their legal representatives, is not the fact. The right of the Convention to do what they did is acknowledged by us as we acknowledge King Egbert's, “because we knew no better.” Certainly, at the time, none better offered, and it has since been confirmed, as we have said, by usage.

Consent, then, proved by acquiescence *after* the change, is the better, if not the true source of our present constitution. By that consent, so proved we are bound as much as if there had been a polling of the people in primary assemblies, and thence a regular emanation of their power through real and legitimate representation; and I may conclude, as

well as the most orthodox upholders of the legitimacy of the Convention, with the sincere wish "*Esto perpetua.*"

These things being premised, I will proceed, with your leave, to consider the facts stated to have been found and proved by the celebrated vote of the vacancy of the throne, and the doctrines supposed to be elicited from the debates, which led to its reintegration in the person of William.

Of this vacancy, as lawyers, senators, or citizens, we cannot be suffered to doubt; and no man but must hold that it has become a fundamental axiom of the constitution, that James abdicated, that the throne was vacant, that the Convention filled it up, that the nation at large acquiesced, and, therefore, consented, and that we all are bound *constitutionally* to take the truth of these propositions for granted. In our closets, and using our reasoning faculties upon the facts of the history, I doubt every one of them.

Upon the *abdication*, and, therefore, the *vacancy* (for so the Commons argued it), Somers was the leading authority: to him it was confided.

I have attended with the deference that becomes me to the whole of his argument, and all his learned authorities, Grotius, Calvin, Brissonius, and Budæus. But, though his explanation of the word, whether as a lawyer or grammarian, must be granted, as well as that it was quite as good as the word chosen by the Lords, *deserted*, we may still be at issue as to the

application of it to James, and still more so as to the consequences, namely the vacancy of the throne, which Somers drew from it.

To abdicate is to *renounce*: granted. And the renunciation may be by deeds as well as words: granted. By inference as well as direct admission: granted also. On the other hand, the addition to this explanation, by the Bishop of Ely, Turner, was equally valid, nor did, or could Somers, in my mind, deny its validity. The bishop allowed that an abdication might be inferred from overt acts; but "I desire to know," said he, "whether Grotius, that great author, in treating on this subject, doth not interpose this caution:—'If there be a yielding to the times, if there be a going away with the purpose of seeking to recover what is for the present *left* or *forsaken*,—in plain English, if there were any thing of force or just fear in the case, *that* doth void the notion of abdication.'"

I own I look in vain for any answer that was given to this shrewd question, supposing it not denied that James was under force and fear, and yielded to the times when he withdrew, of which all may judge from the account already given. Hence the Continuator of Mackintosh gives the meed of praise he deserves to the bishop, who, he says, "discussed the question on broad principles, in a tone of good faith,

* Chandler, ii. 214.

which contrasted very perceptibly and favourably with the manner of the Commons." * Nor did any of them even attempt to reply to the forcible illustration of Lord Pembroke, who compared the flight of James to a man who ran out of his house because it was on fire, or a merchant who threw his goods overboard in a storm to save his life.

Old Maynard, indeed, buckled on his rusty armour, and attempted a reply, such as it was. But did he deny that James was under duress? did he assert that he was free when he fled? Far from it: he might as well have held that when he was ordered by William at the head of his troops to quit London, he was free to remain. He, therefore, contented himself with a poor, mean, and quibbling equivocation. He said that as James had caused the troubles which occasioned his withdrawing, by this he had *renounced* his trust, and, therefore, his place was vacant.

To you I need not observe that, to break a trust, and to renounce it, by which the old man wished (though he dared not go so far) to infer abdication, are by no means the same thing. Why did he not at once say forfeit? Indeed, so it was retorted by the Lords; and no schoolboy but must perceive the despicable sophistry as well as cunning of such an answer; and it is matter of grief as well as surprise,

* ii. 315.

that in this glaring fallacy he was supported by such a man as Holt. However, *rèm quocunque modo* seemed the motto of our Whig deliverers: they lost their reputation, but they gained their object.

Not content with this, Maynard stooped to another quibble, infinitely more degrading. For the law declaring that no man while living can have an heir (*nemo est hæres viventis*), the old rogue, as Swift calls him, did not blush to argue that as James was alive he could have no heir, and *therefore*, there being no heirs, the throne was vacant.

What can we say to this miserable reasoning—this affront to common sense?—but that the men of enlarged sense on Maynard's own side disdained to take it up.

It was in vain replied that the whole argument of the Commons was, that James was civilly dead, and that the heir succeeded, as if by lunacy or incurable infirmity he was incapacitated from governing.

Another pretence denoting the same poverty of argument of the Commons was, that unless you could point out *who the heir was* there could be none, and hence again the throne was vacant.

To this it was replied, and a question asked, If two persons are in a room, one of whom is certainly a given individual, but which is which is not, for the moment, known, would you say therefore the individual is not there? *

* Lord Pembroke.

* B 9

To this subtlety was added another, proving still more, I think, the deficiency of logical argument in the Commons.

They conceive, say they to the Lords, that they need not prove the vacancy to their lordships, because they had already admitted it by their address to the prince—to do what? assume the crown? No; to take upon him the administration of public affairs!

So, then, to administer the public affairs in the absence of the king, proves that there is no king at all. Surely it does not require even an inferior schoolboy's mind to refute such a fallacy.

The great difficulties were three:—first, whether allowing the word abdication to be more proper than desertion, it meant *voluntary* abdication or not? To this the Commons never did, and never could be got to reply, though Maynard indulged in vague common places, and the analogies of vulgar advocacy at the bar.

The next difficulty was, how the vacancy, as to all, was necessarily occasioned by the abdication of one? which is expressly made to appear by the words of the resolution, "*hath abdicated the throne, which is thereby vacant.*"

✓ The third, Whether the throne's being vacant, if it was so, meant vacant in regard to James alone, or to his whole family and race?

All these difficulties, we must agree with the Con-

tinuator of Mackintosh in thinking, were occasioned by the *confused* and *illogical* language of the resolution.

Most of the Lords, who spoke very candidly, said, that if the vacancy applied to James alone, they believed their House would soon be brought to agree; but if to his heirs, it would make the throne elective, to which they would not consent.

This was intelligible, plain, and manly on their parts; but in vain did Lord Rochester and others beg of the Commons to explain their own meaning*; the Commons, from design, which did them no honour, shrank from answering it. Not one grappled with the question, but reiterated the assertion of an unexplained abdication and an ambiguous vacancy. Even Somers condescended to an unworthy evasion; he said that to answer what was meant by vacancy *was not in* their commission, for they came there only to maintain their expression in their vote against the amendments of the Lords. A poor subterfuge, and more like a feed lawyer confined to his brief than an enlightened statesman, discussing one of the greatest crises that could befall a nation. At the same time it was a virtual acknowledgment that to answer the question honestly was not in his power.

He added, that if the Lords would agree to the fact, it would then be time enough to explain what was meant.†

* Chandler, ii. 228.

† Id. ii. 238.

Is it not disgusting that these high and vital questions, decisive of the rights of a whole nation, nay, almost of human nature itself, should thus be made a subject of chicanery and special pleading, as if, instead of boldly asserting and demanding the rights of freemen, we were to be *tricked* into them, from a cowardly fear of not being able to prove them by convincing arguments?

In the same spirit Somers relied on the case of Richard II., who had abdicated, but was afterwards dethroned, and the throne declared vacant, on which Henry IV. was elected to fill it. But his case was totally overthrown by Clarendon, who in this, and, indeed, in his whole conduct of the argument upon this occasion, might have redeemed himself from the contempt in which the Continuator of Mackintosh held his abilities.

He showed that Richard's abdication was by a formal deed of *resignation*, and that leaving no heir of his body, the Duke of Lancaster *claimed the crown as of right*.

In this celebrated conference, Lord Clarendon also relied upon the known and admitted maxim that the king could do no wrong. Meaning, of course, what is always meant by it, *legal*, not moral wrong, and that for legal, his ministers, not himself, were answerable. This is surely very clear; yet in the history it is called a *pernicious ambiguity*, calculated to delude kings.*

* ii. 317.

Is that really so? Is the writer prepared to deny that the maxim is constitutional, or to say that it is not even wise? *You*, perhaps, may think it among the wisest known to our laws; being in fact interwoven most essentially, nay almost synonymously, with the greatest of the safeguards of society, the inviolability of sovereigns.

Our boasted statesmen and lawyers, indeed, allowed that the king's ministers, not himself, were the persons constitutionally responsible; but, with the silliness, or rather ignorance of a child, added an explanation, that it was only so where the instances of mis-government were *slight and few*.

Where they got this modification of the rule, it would puzzle the best of them to make out. As it was, its despicable vagueness as an argument must strike, I was going again to say, a schoolboy; but I will say a schoolgirl.

To proceed: Sir George Treby, though, equally with his fellows, he avoided the questions so searchingly, yet so fairly made by the Lords, spoke loudly enough of the conduct of the king. He said he had abdicated not only by endeavouring to set aside the laws, but was bound by his religion to do so.

This might make his dethronement justifiable, but how it was *abdication*, baffles conjecture.

So also another of his positions. For he did not hesitate to renew the pretension of the Long Par-

liament, that the coronation oath *obliged* the king to consent to such laws *as the people should choose*, which, as the House of Commons are the people's representatives, reduces him to a mere register of their edicts. Need I say that there is no such coronation oath, and that such a construction of the words *quos vulgus elegerit*, was either a gross error, or grosser falsehood. But error and falsehood did not stop here.

The gist of the argument of this great lawyer and pure Whig to prove a *voluntary* abdication was, that James withdrew, not because he was afraid to remain, but because *he did not choose* to govern according to law.

Need I say more upon such a mendacious torturing of the fact?

The chief argument of the Lords against the vacancy of the throne was, that by filling it, it would make it *elective*.

That it did so is one of the points most strenuously laboured by Whig writers, and, as we have seen, scarcely denied by Blackstone; who, we may remember, says that perhaps the Convention might have filled it with a totally new family. Yet this was mooted with vigour by the Commons, even by Maynard himself, whose principles leaned enough to the sovereignty of the people, but who said such a thing was never in the thoughts or intentions of the Commons, who only wished to avoid

the anarchy which would ensue on the vacancy of the throne.

In this he was supported by Sir Richard Temple, Sir George Lee, and Treby. The last contended against the argument that the filling up of the vacancy would make the sovereignty elective, by supposing a case of two children, whose seniority could not be decided, yet one must be the eldest, and therefore the heir.

To fix who should be this heir, could only, he said, be by election; yet this would give no pretence that in common cases, heirs were to be nominated by election. He, however, unambiguously held (and it throws a light upon the whole doctrine of the modern Whigs which we have been considering), that though there were many interruptions in the line of succession, there being scarce three reigns without some interference in Parliament, yet the monarchy always continued hereditary, and not elective.* Advocate as he was for the dethronement of James by virtue of the people's rights, he seems, in his anxiety to guard against the notion that regulation was election, to undervalue what sometimes was urged, that the form of election was pursued at the settlement of the crown on Henry IV.

It is true, he says, that the Archbishop did propose him (*as was usual at coronations*), and he did there actually ask them whether they did choose him for

* Chandler, ii. 249.

their king; but this does not alter his argument that the monarchy is hereditary.

Thus far Sir George; and, as to any argument drawn from the ceremonial of the coronation, I need not to you observe that it is completely answered by the universally allowed maxim of law, that the moment the king dies, his heir is king as much before or without a coronation as after that form is gone through.

Hence I suppose it was that Sir Robert Howard let out the reason why the Commons were so anxious to declare the throne vacant, *in generalibus*, without specifying whether vacant merely as to James, or as to all his race.

"For," said Sir Robert, "if there is a known heir, could your Lordships have assembled without his writ? or could you have desired the Prince of Orange to take upon him the administration?"

"Pardon me for saying, if there were a known heir, you have all been guilty of high treason."

Here then was the secret; and in good truth I am not surprised at the fears and wariness of the Commons.

All these difficulties were occasioned by the aversion, either from cowardice or cunning, both in Whigs and Tories, to decide manfully and openly upon the question of the birth of the Prince of Wales; and, in so far, derogates woefully from the merits, as bold defenders of liberty, of *all* the Revolutionists.

It was hence, no doubt, arose that important omission, in the new oath of allegiance, of the emphatic words *rightful* and *lawful* sovereigns, the oath being simply confined to allegiance to their Majesties King William and Queen Mary. The editor of Mackintosh says it was wisely done to leave an opening for real, or an excuse for capitulating, scruples of conscience.*

Perhaps so; but what, then, becomes of the all triumphant, all inherent, and inalienable right of the people to dispose of a government as they please. This was certainly not exemplified by this feature of the Revolution.

Treby points out various instances of interference, to which and more we have formerly adverted †; but there is this defect attending them all, except the instance of Henry IV., that the king, *de facto*, was joined with the parliament in whatever was done.

Nor is the Convention of 1660 an exception; for, as we have shown, there was neither election nor regulation in their operations, not even in the recal of Charles II., who wrote to them *claiming his right* from the death of his father, which was instantly and humbly admitted.

The notion, therefore, that the finding the throne vacant made the monarchy elective was denied by the revolutionists; and, if I cite these particulars, it is only to show, that the construction put upon the Revolution as a precedent, by our modern expounders,

* Vol. ii. 327.

† Supra.

is not the same, but the direct contrary, of that asserted by the authors of it themselves.

Let the disciples of Mackintosh and Price look to it, and demonstrate, if they can, that the principles of any one of the managers of the Conference could, by possibility, have persuaded them that they might have elected Jeffreys or Kirk into the vacant throne instead of William.

Upon the whole, whether in this important conference we look to the meaning of the words discussed, the authorities and cases quoted, or the representation of the sheer facts regarding the position of James, I think, now that passion is at an end, and party feeling out of the question, we shall be forced to admit that the Lords triumphed in the argument.

This seems to have been allowed by Hallam, even in his elaborate and vigorous defence of the Whigs, to which I shall hereafter come.*

* His language is, "In this conference, however, if the Whigs had every advantage on the solid grounds of expediency, or rather, *political necessity*,¹ the Tories were as much superior in the mere argument, either as it regarded the common sense of words or the principles of our constitutional law." *Constit. Hist.* iii. 352.

In the same strain the editor of Mackintosh observes, "The Whigs acted to a much greater extent than they avowed upon the principle *since called* the sovereignty of the people; but the Lords were, of the two, the more ingenious and consistent in their principles and arguments."—*Hist. Rev.* ii. 319.

¹ Necessity we see here can be the insurgent's as well as "the tyrant's plea." What would Milton say to it?

The Lords, also, in what they did contest bore away the palm of manliness, openness, and consistency. The Commons never could explain whether abdication must not, in their minds, mean a voluntary act, free from the influence of terror. Those, therefore, who think that it did (which, I should say, comprehends all thinking men,) must feel that one of the two great findings of the Convention, the abdication of James, was a falsehood. The Commons were equally false, though equally astute, to their purpose, in avoiding to comply with the fair question, whether, though the throne might be *vacated*, it was, therefore, *vacant*; that is, though James might have renounced it, (supposing he had done so,) that, therefore, there was no heir who had a right to fill it. The fact was undoubted, that either the son or the daughter of James was the lawful heir against all competitors. The finding, therefore, that there was no heir at all (which was meant by finding the vacancy) was another prevarication, and a very mean one.

Not one of the managers for the Commons did or could answer Lord Nottingham, when he thus wound up the case of the Lords:—"You seem to understand your own words to mean less than they really import. You would not make the kingdom elective; and yet you talk of supplying the vacancy by the Lords and Commons.

"You do not say that the King has abdicated the

crown for himself *and* his heirs; and yet you speak of a vacancy, saying nothing of a succession.

"You do not tell us what you mean. If you mean only that the King has left the government, and it has devolved upon his next heir, we may agree. Any government is better than none.

"I desire earnestly to preserve our antient constitution."*

It is true, by this verdict, they avoided much inconvenience, evaded many embarrassing questions, and stifled many claims that stood in the way of their object; but they did not, after all, deliver themselves from the dangers they hoped to escape by getting rid of a disputed title. That danger they were forced to encounter, and their posterity after them, with to the full as many sacrifices as if they had boldly declared, as Mackintosh would have had them, the right of the people to sit in judgment upon their rulers, cashier both them and their families, and choose another dynasty, or even another form of government.

Some (a very few, and those the lowest among them,) would have done the last; but this would not have suited either William or the aristocracy; and they chose rather to involve themselves in all the intricacies we have seen, and dabble in false pretences, to bring about what might have been better supported by simple truth.

* Chandler, ii. 253. See the whole of this excellent speech.

In resting part of a case, which wanted no such support, upon the scandalous invention as to the birth of the Prince of Wales, they acted with a meanness which covers them with disgrace.

In voting the throne vacant, with the heir standing at their elbow, they astounded, yet must have excited the ridicule of, all thinking, all honest men. I can liken this to nothing so well as to an incident after the Irish rebellion in 1798, related with great humour, in a novel, it is true, but which is so replete with the true original humour, as well as the virtues, of the true Irish character, that all who wish to know Ireland, or, knowing it already, love it, ought to read it.

Some may doubt the story; but I have heard from authority that, though Mr. Lover has engrafted it in his delightful fictitious tale of Rory O'More, it is not itself a fiction.

Perhaps the reader will not believe it, when he is told that the innocent, though rebel, Rory is tried for murdering a man who actually walks into court during the trial, and proves his innocence; yet the jury insist upon their right to give a verdict, and find him guilty.

When chid for this absurdity by the judge, they say they know he is innocent of the murder; but, having been in the rebellion, it is right to make an example.

They therefore persisted, and the judge is forced to obtain a pardon for the accused.

Just so, it seems, with the Convention of 1689. They find a contract with the people which never existed, but which would have been very decisive had it done so: they state abdication which never took place, but which would have been convenient if it had; and they create a vacancy of the throne, where the heirs, like the man Rory murdered, were in open court, but without which they could not have filled it with William.

Even as it was, the Commons might, possibly, have not been able to overcome the better arguments of the Lords, had it not been for aids somewhat different from the theorems of the logician and the philosopher.

For the logic of the mob, if not expressly called in to their support, was offered, and, according to some accounts, by no means disdained, to bring about conviction in the Lords.

The weapon resorted to was the usual one of a *petition*, got up in the city by threats and violence, with the palpable design of intimidating the Peers. It was carried from house to house, presented to persons in the streets and other public places, for signature, and borne or escorted by the mob to the very doors of the Convention. The prayer, or rather *admonition*, of the petitioners was, in substance, that the Protestant interest was in extreme peril, and could be secured only by the *immediate* elevation of the Prince and Princess of Orange to the throne.

The Prince and his friends were suspected of

having contrived this turbulent movement to overawe the Lords. They defended themselves by showing that they had desired a prohibition of the petition by the lord mayor. But this the Continuator who seems on no occasion to be eager to repel attacks upon the Deliverer, proves to be impossible; for the petition was presented the 31st of January, and the lord mayor's proclamation, dated the 4th of February, states that the prince's pleasure for it was only received on that day. "Thus," significantly adds he, "there was a delay of *five* days, for the terror of being *De-witted* to operate upon the fears of the refractory lords, and almost all the bishops.

But, exclusive of menaces by petition, there were menaces still more cogent of another kind, and from another quarter. King William, impatient, perhaps indignant, at the delay of his object, the crown in his own right, caused it to be signified that he would neither be regent for his rival nor king consort to his wife; or, to use Fagel's emphatic expression, his wife's gentleman-usher. This threat had its effect with some, and a still more strong one with all; for he gave out that, if the Convention did not close their debates, he would leave them to the mercy of James, and return with his army to Holland. The plan succeeded to a miracle. The Lords, who had obtained the victory in the debates, surrendered all the advantages of it in practice. They yielded; and the *bungling* resolution of the Commons became the law of the land.

Is this expression too strong? Consult Blackstone for the effect upon him by the passages relating to the vacancy of the throne.

Be this as it will, whether by terror, or management, or both, the triumphant arguments and scruples of the Peers gave way; and the famous vote of the Commons, with all its errors as to principles, and all its falsehoods as to facts, was accepted by the Lords, and thus became the foundation of our new constitution.

This vote is cited by Blackstone as justifying the legality of the Convention Parliament, which, according to the views I have hazarded, wants no such justification. He seems to think that, having been assembled without writ (that is the king's writ), their meeting could not be defended, except upon the principle of necessity.

In this we have agreed; but the cautious judge goes on to show, not the necessity for assuming the character of a provisional government of a nation standing on its defence against oppression, but of meeting in consequence of the vacancy of the throne, after the abdication of the King.

"For let us suppose," says he, "that the whole royal line had become extinct, *that* would certainly vacate the government; in which case the Lords and Commons, it should seem, would have a right to assemble and settle the government anew, otherwise there would be no government at all."

This may be granted; but, though the Lords are always provided by the Constitution, the learned

Commentator had still to point out who were the Commons. They could only be known by being properly summoned by some legally ruling power, and properly elected by the people, their constituents. If not summoned, and not elected, therefore, who is to know them? where are they to be found? The vacancy of the throne, had it been *bonâ fide*, and not a forced and false construction, would give no right to any set of men to represent the people without the people's fiat; and how that was to be obtained, except by voluntary meetings, as if all had returned to a state of nature, would puzzle ingenuity to imagine. Certainly the farce of the spurious and motley meeting, as played with such applause in the Commons' theatre, by the command of his Majesty, would not confer upon them the rights of the Commons themselves; and Blackstone would be still to seek to find them, in order to bring them within his case of necessity.

As, however, we own all the powers of such a case, we all own that any meeting of *any* individuals, of influence enough to *be obeyed* ad interim, might assume the direction of affairs, subject to the approbation of the people, afterwards given, either by some formal recognition from their various bodies, or by quiet acquiescence and uniform usage; and this, one would think, would meet the exigency of a case of necessity in a more plain and intelligible mode than Blackstone's requisition of a House of Commons, which could not, by possibility, be found.

The judge, however, (still cautious,) required, and very properly, that the throne should be *really* vacant before his case of necessity could arise to justify a Convention, though the Commons' part of it might be ever so regular.

And how does he demonstrate this vacancy in 1689? By the fact, proved by the event? No! *proved by the finding of the Convention itself!*

Here, therefore, with submission, there is an absolute contradiction; for his Convention can only be justified by the fact of a vacancy of the throne; and that vacancy is only proved by the vote of Convention.

And thus I have endeavoured to set in a prominent point of view some of the most important objections which, in reading the history of our Revolution, deprive it, in my mind, of that character of perfection and glory which our Whig ancestors were fond of attributing to it, but which our modern Whig doctors begin to deny. I deny it, too; but for very different reasons. *They* think it did not go far enough: *I* am content with what was done, but think it was not well done; certainly that it might have been *better* done. All was faulty, defective, disingenuous, hypocritical; the hero often dishonest, the actors almost always so. The most important benefits were obtained, but obtained on false pretences, and, as is said, by perfidious arts, as if the sages and patriots who brought it about were ashamed of their principles, or had not courage to act up to them.

Are we not founded, then, in thinking that, if the betrayed King had been commonly firm, he, probably, would have repelled his enemies in the field, as the Tories certainly did in the argument? Upon the whole, it is an ample exposition of the French revolutionary maxim, exposed by Burke, "Get but possession of power, no matter how, and get a subsequent consent to your keeping it, and it makes it as much an act of the people as if they had originally given their consent to what you seized without it.*"

This seems to be the real character belonging to this far-famed event: the end was glorious not the means. Success has gilded it, and we take the glitter for gold; but so thinly spread, that one is only astonished at its weathering the storm which, in its infancy, raged above, and below, and all around it.

Certainly we look in vain for anything like unanimity, unity of purpose, or universality of principle, in the debate at the Conference. It seems like the Lucretian philosophy respecting the formation of the world, — a conglomeration of atoms, which fell together by a happy fortuity, and acquired consistency and strength by time.

Still more in vain do we look into it for those doctrines for the support of which Price ventured all his effrontery, and Mackintosh all his genius. If these doctrines ever had place in the minds of the revolutionists, surely theirs was the time and the op-

*. *Supra.*

portunity for producing them. But though the Bill of Rights was full, to display all the rights and privileges of Englishmen, and though the king was removed, and another chosen in his place, the bill and its framers, who had all power to do it if they pleased, were altogether silent, and did not dare even to glance at the power of *cashiering* when they pleased, still less to hold that the monarchy was elective.

To observe this is the more important, because all the different interferences of Parliament with the succession were canvassed. Turner of Esly, one of the ablest of the Tory champions, allows of seven instances; and the cases of Henry IV. and Henry VII. had their full share of notice. Yet nowhere are these modern doctrines to be found as the consequences that flow from those cases. On the contrary, as is well and wisely observed by Burke, "the Act of Settlement itself was cautious not to turn cases of necessity into a rule of law."

At the same time, I am aware that, on such a subject, I should be wanting in duty to its elucidation, as well as respect for two names, highly distinguished by the deepest researches and powers of criticism upon this very point, if I did not give all the benefit that can be derived from them (and that is not a little) to those who may feel interest enough in it to probe the matter to the bottom.

The names I mean are those of Mackintosh and Hallam, whose abilities, and depth of inquiry, have obliged me so frequently to turn aside and encounter them

(I know not with what success). As my shafts, however, are all sped, and it would be inconvenient, perhaps unjust, to myself to alter my course, after being so near home, I have judged it best to consider them apart.*

Perhaps these opinions of mine may startle many, but not you. They may even, I fear, hurt some generous, and particularly young, minds, warm with the spirit of liberty, and dazzled, as I once was dazzled myself, with very splendid theories, very weakly supported. The foundation laid for them has, with me, long given way. We *have* national rights, and we owe much of their development, and still more of their security, to the Revolution. The Bill of Rights alone, though it contained little new, is a treasure so precious, for the security it gave to our liberties, that it would be almost useless, certainly ungracious, to inquire too minutely by whom and how it was brought about. Rather, perhaps, we ought to think of Babouk, and be silent.

But what, then, (I think I hear a constitutional lawyer say,) is the Convention Parliament to be called nothing but the bastard of a bastard? Was it not the true people? Is its solemn adjudication of the truth of all those memorable facts, which they found as preliminary to their final decision that James had abdicated the throne, which was thereby vacant — is all this to be considered as nothing? Can it be not

* Vide Appendix, No. III.

true, when so voted, that he did endeavour to subvert the fundamental laws; that there *is* a compact between the king and the people, which he broke; and that he *did* all this by the advice of Jesuits, and other wicked people?

To this, these strictures answer, that the *legal consequences* of this vote it is not competent for any one to deny; in other words, that, the throne being *declared vacant*, and King William chosen to fill it, his title cannot be disputed. But, these legal consequences being granted, we may believe as much or as little as we please of the propositions on which they were founded. We may believe or not that James actually abdicated; that the throne was, therefore, actually vacant as to his family; that there *was* a compact between the king and the people, or even that Jesuits are wicked persons.

All these may be true or false in the abstract; but neither their truth nor falsehood, any more than any other truth or falsehood, can be proved by a vote in parliament. The credibility, therefore, of these questions, although they have become part of the law of the land, is left just where it was before this memorable vote; which no more binds our mental belief than the internal religious faith of the soul is bound by the infallibility of popes, or the authority of general councils.

And so much for the amount of this celebrated precedent, from which have sprung so many warm theories, so many violent struggles. So much, also,

for its real character, and the character of those who were its authors. Yet, if reverence for these may be somewhat diminished in the minds of those (if any) who may agree with these strictures, not the less ought we to congratulate ourselves on the lasting benefits which the Revolution has conferred upon us. But for William and the protestant ascendancy, not only our religion but our liberties might have been lost. We ought, therefore, to be grateful for what was done, though not blind to the manner of doing it. Still less ought we to be carried away by mistakes as to facts, or by supposed but fallacious authorities, to countenance doctrines that never were conceived, much less asserted, by those who, in our wild and dangerous theories, it is a habit to suppose were their enlightened authors. If I have succeeded in the endeavour to put our liberties upon their true ground, as pointed out by the light of reason and nature, and to disentangle them from that vast web of sophistry with which some historical visionaries, and many theoretical patriots, have surrounded them, my object will be gained. Should I even fail with many, and you approve, I shall have no regret for having undertaken a task which will not then have been undertaken in vain.

APPENDIX.

No. I.

COPY OF A LETTER FROM COLONEL AMBROSE NORTON, MAJOR IN THE DUKE OF ST. ALBANS'S REGIMENT OF DRAGOONS, GIVING AN ACCOUNT OF THE DESERTION OF SOME OF THE TROOPS, AND THE MEANS USED TO SEDUCE THEM TO JOIN THE PRINCE OF ORANGE. TAKEN FROM CARTE'S MEMORANDUM BOOK, MARKED * VOL. XII. 4TO., AND PUBLISHED IN MACPHERSON'S STATE PAPERS, I. 287.

November, 1688.

SIR,

At the last camp which King James had at Hounslow-heath, which was in part of July and August 1688, the Earl of Dumbarton, one of his Majesty's, lieutenant-generals, sent for one of the field-officers of every regiment that were Roman Catholics, and

the majors of the regiments where neither the colonels nor lieutenant-colonels were Roman Catholics; and his lordship told me, and, as I presume and heard, he did all the rest, that his Majesty had commanded him to send for me, to give him a list of all the officers and soldiers in the regiment that were Roman Catholics, which I was ordered forthwith to do, because his Majesty expected an account of it from his lordship. The number of Roman Catholics was then very inconsiderable in our regiment, being but one lieutenant, a quarter-master, and thirteen troopers.

This order proved of fatal consequence, and was a very great furtherance of the business of our associating officers, who, daily and openly, in the camp, aggravated it with all the rancour and malice imaginable; affirming, with volleys of oaths, that it was in order to turn out all the Protestant officers and soldiers in the army, and to have none but Roman Catholics in military employments. That, in order thereto, the Irish regiments were sent for hither, and the English would be exchanged, at several times, and be reformed in Ireland, that not a Protestant would be left in them.

This was so credited that it brought over many to their party, as I have often heard; but, being confined by you in this relation to send nothing but mere matter of fact, to my own knowledge, I must confine myself more narrowly to what related to the Duke of St. Albans's regiment, in which I served.

His grace, both before and at the time of the late great Revolution, being in France, his lieutenant-colonel, Thomas Langston, having the command of the regiment, and being deeply concerned in the association, was very diligent to aggravate the aforesaid order, with all the spleen and rancour that malice could invent, to most of the officers and soldiers of the regiment; and seldom failed expressing it under several heads, the truth of which he affirmed, with volleys of oaths, to be to his own knowledge:—

First, that, in a very short time, the King would not have one Protestant officer or soldier in his whole army; and that he had entered into a close league with France to have all the Protestants' throats cut in England and Scotland.

Secondly, that the Prince of Orange had his own taylor, that was a papist, and his boy, in custody, that were hired by King James and the Earl of Sunderland, Father Petre, and Sir Nicholas Butler, to poison the Prince of Orange's waistcoat; which was discovered by the boy the very morning the prince was to have worn it; and, also, that his master had confessed the same.

Thirdly, that the Prince of Orange had also in his custody the true mother of the Prince of Wales, who had sufficiently proved the same in Holland, and would do the like here.

Fourthly, that King James, so soon as his army was modelled to his purpose, would set up a mass in every church of England and Scotland; and he

that was not a thorough papist would be hanged, quartered, or burnt.

With these discourses, he frightened and wheedled several officers and soldiers to undertake with him in his design of deserting his Majesty, who had made him lieutenant-colonel, and, if I have not been mis-informed, gave him twice money to pay his debts, under which he was very uneasy. The further to confirm his officers to effect what was designed, he introduced some of them into the company of the Treason-club, as it was commonly called, at the Rose Tavern, in Covent Garden, where they frequently met to consult with the Lord Colchester, Mr. Thomas Wharton, Colonel Talmash, Colonel Godfrey, Mr. William Jephson, and many others of their party; and there it was resolved, that the regiment under the aforesaid Lieutenant-colonel Langston's command should desert entire, as they did, on Sunday, November, 1688. The which was the better effected, because the Lord Churchill, one of the lieutenant-generals, had ordered those regiments to go on the advanced post nearest the enemy. The day before we deserted, a private cabal was held at Salisbury to agree on the time and manner of doing it. Of which cabal was the Lord Cornbury, colonel of the royal regiment of dragoons, Sir Francis Compton, lieutenant-colonel to the Duke of Berwick's, formerly the Earl of Oxford's, regiment, Lieutenant-colonel Langston, commandant of the Duke of St. Albans's regiment,

and some few others of their trusty associating officers; and, among the rest, it was agreed to put their design in execution very early next morning; and not to intrust it to Lieutenant-colonel Sutherland, who commanded Sir John Fenwick's regiment, but to deceive him and all the rest of the officers that were not in their interest.

Orders were given at the setting of the watch, being at ten at night, that the quarter-masters and adjutants of the foresaid three regiments should wait for the coming of the post, by which, they gave out, they expected marching orders. They accordingly did so. About twelve the post came in, and Colonel Langston also, who had, accordingly to the agreement of their late consult, the counterfeit sham marching orders from Mr. Blathwayt, secretary of war. He called for the bag before the officers, and broke it open, and conveyed the orders so cunningly amongst the letters, that none of those discovered it whom he had employed to help him to look for them. He immediately carried them to Lord Cornbury, the commandant; and, thereupon, orders were presently given out for the regiment to be ready to march, at five o'clock the next morning, towards the enemy; and, the better to disguise the matter, it was given out that several other regiments were to come immediately into our quarters, and refresh themselves, and follow us. Two days and a night we marched very hard, not keeping the direct road, and had very little time allowed us for rest; so fearful were they

of being pursued. In the march, they were very apprehensive that the Earl of Feversham, the Duke of Berwick, or Sir John Fenwick might overtake them, and countermand their march; which, if any of them had, or any other general officer that was not of their party, they were resolved to have shot them, as both Lieutenant-colonel Langston and others told me, when they were got into the Prince of Orange's quarters; and, in order to it, Francis Langston, captain lieutenant to Lord Cornbury's troop of dragoons, and brother to Lieutenant-colonel Langston, commanded an advanced party of dragoons in the front, and Lieutenant-colonel Thomas Langston another in the rear, of the three regiments that he drew out of his own troop, which, he pretended, were to keep the men up together, but were, in truth, to have executed the aforesaid design.

In our march, the Earl of Abingdon, Sir Walter Clerges, and several others, came in to Sir Francis Compton, under pretence of being volunteers with him, and marched with him to Axminster, within six miles of the enemy's quarters, where we halted the most part of that day; and, in the evening, it was given out that they had discovered a design of the enemy's beating up our quarters. In order to prevent it, orders were given out for our being in readiness, in the evening, to beat up theirs; and, accordingly, at the time, the trumpet sounded, and the dragoons' drums beat to horse. After which, having sat three or four hours on horseback, which

was chiefly occasioned by Major Littleton, of the Duke of Berwick's regiment, and Major Clifford, of Lord Cornbury's regiment, who had information given them by some of their soldiers that the pretence of beating up the enemy's quarters was but a sham, and that it was a design to desert the king; assuring them that some of their fellow-soldiers had been persuading them to go in along with them. Upon which the two majors so threatened Sir Francis Compton and the Lord Cornbury that, though they were the two forwardest officers for deserting with the regiments at Salisbury, yet Sir Francis Compton hung an arse, and sneaked away back to Salisbury with almost his whole regiment; and Lord Cornbury stole away with his. Lieutenant-colonel Heyford, who was more resolute, stayed, with most of his troop and some few others, not exceeding fifty in the whole. The regiment marched back to Salisbury under Major Clifford, to whom his Majesty gave the regiment. The whole time of being on horseback at Axminster, the Duke of St. Albans's regiment was drawn up in a yard and back street; and at such a distance from the other two regiments, and being very dark, that they knew nothing of what happened to the other two regiments.

About ten at night, being the 12th of November, Colonel Langston came to the head of the regiment, and commanded them to march, which accordingly they did; and, about twelve, we marched into Honiton, the enemy's quarters; where, instead of beating

them up, we were received as friends, to the great surprise of those that were not instructed with the business. Brigadier-general Talmash commanded in chief, where his regiments of Scots were drawn up, as, also, small parties of horse of the Prince of Orange's *garde du corps*, Mr. Bentinck's regiment, and a party of Gray's dragoons. There were no regular quarters assigned for the deserters that night, but they were all ordered to shift for themselves, and to be on horseback, near the market-cross, at eight next morning. Every officer had time given him till then to give his answer, whether he was willing to stay with the Prince of Orange or not; and those that would had all manner of encouragement and promise of preferment. Those that were not willing were promised leave to return, with their horses, arms, and baggage; but, before the time was expired, their answer was demanded; and Major Ambrose Norton, Lord John Metham, Cornet Archibald Clincard, Cornet Dennis Ashburnham, and Quartermaster David Brady, upon their refusal to embrace the service, were all made close prisoners.

At the time appointed the regiment was on horseback; and the confined officers, being just against them, they could see what past; which was Colonel Langston riding through the ranks bare-headed, haranguing and persuading the soldiers to stay with him; but about thirty-three, refusing to serve, were immediately sent prisoners to the main guard, which was kept in the market-house; so that the number

of soldiers that embraced the service, besides officers, were, of the Duke of Berwick's regiment, twenty-five mounted, and two on foot; of the Duke of St. Alban's regiment, one hundred and one mounted, and fifty dragoons; in all, one hundred and seventy-eight: a very inconsiderable number to make so much noise as it did through the kingdom, of three regiments deserting in a clap. But they, being the first that broke the ice, valued themselves extremely upon it, and reviled the King their master, whose money and commissions they went off with in their pockets, with such base and opprobrious language, as is too indecent to be repeated. They were so far from keeping their promise, of letting the officers and soldiers return, with their horses, arms, and baggage, that they plundered them of all they had, that only excepted which was on their backs; and with such inhumanity to their fellow officers, that they would not suffer them to change their foul linen for clean, nor let them have their papers and money, or any thing else, that was in their portmanteaus. The fore-mentioned time, that the officers had given them to consider whether they would embrace the service or not, gave them opportunity to inform themselves in what condition the enemy was; and the account given them, by several officers that came over with the prince, was, that they were between thirteen and fourteen thousand; but that they were in a very ill condition, with their horses, by reason of the great storms at sea; and that the Prince of Orange had

long expected his friends in the army, not setting a value upon the country's coming in to him. That this would be extreme welcome news to his Highness at Exeter; and that we had exactly nicked the time; for, had we not come when we did, he was resolved to embark at eight next morning, and go back, which had been the result of three councils of war. But just at the breaking up, it was carried to stay twenty-four hours longer, to try if any of the army would come in; and so little hopes had they, till this party came in, that the Prince had not so much as brought his cannon ashore.

The Scotch soldiers of colonel Talmash's regiment, that had the guard of the Duke of St. Alban's regiment, treated them very civilly, and gave them drink, and drank King James's health to them, on their knees, and they declared to them their great dislike of the service they were engaged in. They said they were all one king's subjects, and were very sorry it was their fortune to be in the service against their own king. They complained of their hardships and smallness of their pay; and they wished they were so happy as to be in the King's service; and, if he would but pardon them, it should not be long before they should be with us: that they knew a great many more that were of their minds, if they were sure of their pardon and of being employed.

Many persuasive arguments, with great promises of favour and advancement, were often repeated to the officers, in the time of their confinement, to induce

them to embrace the Prince of Orange's service; and, among many others, they assured them, that the Prince's coming into England was upon the earnest request and invitation of the lords spiritual and temporal, the army, navy, and most considerable body of the nation, to redeem them from slavery and popery. They also, with many oaths and vows, assured major Norton, that a lieutenant-general, under whom he had served, was the deepest in the association, and was the first who proposed to them the undertaking, and had faithfully promised them, and sent the Prince word, that he would be there that night, or to-morrow morning at farthest; and not he only, but many others also, the most considerable officers in the army, and with the better part, if not all, their regiments; the Duke of Grafton's foot guards and the old regiment were certain to come in to them; and that, in a few days, we should see the King the most deserted prince that ever lived. Some of the deserting officers wrote to their friends what progress they had made, to encourage them to come in to them; and with these letters and a pass, after three days' confinement, they dismissed the officers, and, soon after, the soldiers. But within an hour or two, they sent a party of twenty dragoons after them; upon what design the late prisoners know not; but they followed them a day's journey, and lay but three miles short of the officers; only cornet Ashburnham and two troopers, going a-foot, lay short, and fell into their hands. They took from them their money, and the cornet's

cloak, which was all that was left before, but just the clothes on their backs. They told them their business was with monsieur, their major, and were very inquisitive after him. But no account of him, they returned back.

These officers and soldiers thus coming away, so much discouraged many of them, that they sneaked away again. His Majesty, and the Earl of Feversham, his lieutenant-general, received the officers and soldiers, that were so trepanned into the enemy's quarters, and returned to their duty, most extraordinarily kindly at Salisbury; and, after the major had acquainted his Majesty with all the discoveries he had made, by being in the enemy's quarters, which were further confirmed by several letters which fell into his Majesty's hands, he was graciously pleased to make the major lieutenant-colonel of the Duke of St. Alban's regiment, and advanced all the rest of the officers, and gave to each two hundred days' pay to equip themselves, and also five pounds to each trooper; and orders were given, that the corporals should be made quarter-masters; and as many of the troopers as were fit, and vacancies, to be made corporals; and each to have twenty pounds more to remount him, and the regiment recruited. The officers and soldiers received all this money at Salisbury, without any deduction of poundage; so affectionately kind was the King to those of his army as did their duty; which, together with many of the regiment that were not able to get up, by reason of

the hardness of the march, made up above eighty soldiers, who were afterwards at Highgate. But by reason of his Majesty going away, that regiment was not recruited; lieutenant-colonel Norton paying constant attendance to his Majesty, even to his last departure from Rochester. A corporal or two, and several trumpeters, that had marched a-foot from Honiton to Salisbury, followed him to Rochester, to tender their service there. But, it being then too late, they returned home to their own country, which was Derbyshire, where they had been raised by the Earl of Scarsdale. Several of the loyal soldiers were of the Peak. Had not these things gone on so fast, these soldiers had discovered a spy or decoy, in their march from Honiton to Salisbury, which might have been of service to his Majesty. The spy treated them very kindly with all that the place afforded, and insinuated himself very much into them, under pretence of desiring to be a trooper with them; and, after having drank very hard with them, desired to know what pay they had. When he was told two shillings and sixpence a day, he said it was very small; and that he had been at Exeter, and was there pressed five shillings a-day to be a trooper, with two leather pouches full of money, to buy him a better horse. By this discourse, they believed he designed to decoy them back again. After which he slipt from them. But they, acquainting their officers with it, were ordered by them to make inquiry after him, which they were very diligent in doing; and, after

some short time, found him attempting the same thing on the foot-guards, where, by order, he was confined on the main guard in the session-house at Salisbury. Notice whereof being given to lieutenant-colonel Langston, he went and examined him there; and, reflecting on what he had said to the troopers, and by some papers found in his pocket, it appeared that he was a captain or master of a ship, a Taunton man, and undoubtedly what he was suspected to be. Lieutenant-colonel Norton acquainting the King with it, he ordered one of the secretaries of state to go and examine him again, and commanded the lieutenant-colonel to attend him; which being accordingly done, he was convinced that he was one of the Prince of Orange's decoys or spies; and gave him till next morning, about eight, to confess or die. But that night, the Lord Churchill, who had been till near twelve in his Majesty's bedchamber at a council of war, deserting with some others, his Majesty altering all his measures, and retiring from Salisbury, our spy was lost; or, at least, I never heard of him. These are all the remarkable passages that I can remember to have been acted by the Duke of St. Alban's regiment, relating to the late great Revolution.

No. II.

THE SPEECH OF DENZILL HOLLES, ONE OF THE COMMISSIONERS OF THE HOUSE OF COMMONS, IN 1660, TO KING CHARLES II., ANNOUNCING THE PROCLAMATION THAT HE HAD RETURNED TO HIS THRONE.

Dread Sovereign,

YOUR faithful subjects, the Commons of England, assembled in parliament, have sent us hither, twelve of their number, to wait upon your Majesty, and, by their commands, we are here *prostrate at your royal feet*, where themselves are all of them present with us in the sincere and most loyal affections and desires of their hearts, and would have been in their persons, if your Majesty's service, and the trust reposed in them by all the several parts of the kingdom, did not necessarily require their attendance and continuance in the place where they now are, and where all their thoughts and endeavours are wholly taken up and employed in those two great and main works, which are the proper and genuine ends of all parliaments, the advancement of their king's service, and the discharge of their country's trust. And certainly, Sir, we can speak it with a great deal of joy, and with no less of truth, that never parliament made greater demonstrations of zeal, affection, and loyalty to any of the Kings of England than this parliament

hath done, and doth, and we hope, and doubt not, — nay we know it, that it ever will do unto your Majesty, our liege lord and king.

Their hearts are filled with a veneration to see and serve you; and their tongues do, upon all occasions, express it; and in so doing they are (according to the nature of parliaments) the true representative of the whole nation; for they but do that in a more contracted and regular way, which the generality of the people of the land, from one end of it to the other, do in a more confused and disorderly manner: yet, as heartily and as affectionately, all degrees, and ages, and sexes, high and low, rich and poor (as I may say), men, women, and children, join in sending up this prayer to heaven,—God bless King Charles! Long live King Charles! So as our English air is not susceptible of any other sound, and echoes out nothing else. Our bells, bonfires, peals of ordnance, volleys of shot, the shouts and acclamations of the people, bear no other moral,—have no other signification, but to triumph in the triumphs of our King in the hearts of his people.

Your Majesty cannot imagine, nor can any man conceive it but he who was present to see and hear it, with what joy, what cheerfulness, what lettings out of the soul, what expressions of transported minds, a stupendous concourse of people attended the proclaiming of your Majesty, in your cities of London and Westminster, to be our most potent, mighty, and *undoubted* King.

The oldest man living never saw the like before; nor is it probable, scarce possible, that he who hath longest to live will ever see the like again, especially (and God forbid he should) upon such an occasion; for we wish and heartily pray that your Majesty may be the last of men of the generation now in being who shall leave his place to a successor.

We have the Proclamation itself to present unto your Majesty, and the order of the two Houses enjoining it to be proclaimed throughout England, Ireland, and your dominion of Wales; and, likewise, their orders for all ministers in their public prayers to pray for your Majesty, and for the illustrious Prince the Duke of York, your Majesty's brother, and for the rest of the royal progeny. And another order of theirs, for taking down every where the assumed arms of the late pretended Commonwealth, and setting up the arms of your Majesty in their stead.

You are the light of their eyes, and the breath of their nostrils, their delight and all their hope. To have been so long banished from them into a strange land, it is no wonder that the news of your return should put a new life into them. What then will it be when their eyes shall be blessed with the sight of your royal person? And, therefore, are we commanded humbly to acquaint your Majesty with the earnest desires of both Houses for your speedy return unto your parliament, and the exercise of your kingly office.

No. III.

OPINIONS OF MACKINTOSH, OF THE CONTINUATOR OF HIS HISTORY, AND OF HALLAM, UPON THE DEBATES IN THE CONVENTION PARLIAMENT, 1689.

THE opinions asserted in these strictures upon the famous vote of the abdication and vacancy of the throne, are not in unison with those of the jurists named above. Let us see how they differ. On the question whether the declaring the throne vacant, would not make it elective, the Continuator of Sir James observes, that Maynard, having argued that the Commons did not mean to say that the crown was *always* and *perpetually* elective, *he left it to be understood by implication*, that they *did mean it to be elective for that time*.

It is never to be forgotten that the position of Sir James is, that the proceeding of the Convention established as a principle, that a total stranger to the family of James (emphatically Kirk or Jeffries) might have been elected as well as William. This we have denied, and deny also that Maynard even thought so in what he said. His speech is guarded and cautious against the notion of election. He says, pointedly, the word "elective" is none of the Commons' word; neither is the making the kingdom elective the thing they had in their thoughts: all they mean by this matter

is to provide a supply for the defect of the government. *This provision must be made, and if it be, that would not make the kingdom perpetually elective. I stand not upon any word, but am for the thing, that a provision be made to supply the defect.**

I think I may safely leave it to the judgment of any enlightened person, whether this was more than a fair anxiety to fill up the vacancy (supposing it to exist) by some fit person, who, from being *among the heirs of the crown*, might have a claim to be appointed in the room of one not so fit. To suppose that Maynard's language, as above given, could warrant, *even by implication*, that he agreed with Mackintosh in holding that Kirk or Jeffries had as much legal qualification as William, is to me astonishing.

In his review of the errors in reasoning of the managers for the Commons, which led to the final vote, one would suppose the Editor of the History of the Revolution was arguing on our side, and he argues ably.

"The resolution of the Commons," says he, "was so deficient in perspicuity and logic, that one of their managers, after, as has been observed, calling the abdication a premise, admitted it to be a conclusion; and then sought refuge in the solecism of a double conclusion. The substance of it in a logical form may stand thus:—The King, by violating the original contract, abdicated; and, by abdicating, vacated the throne. It was a sort of *sorites*, in which the abdica-

* Chandler, ii. 233.

tion was intended to be a conclusion as to what goes immediately before, and a premise as to what immediately follows. But, in point of fact or logic, it was neither the one nor the other. It is of the essence of abdication, that it should be free. Every abdication recorded in Livy, from the first Dictatorship down to the abdication of Sylla, is voluntary. Grotius says it must be voluntary and free, whether done by overt act, or by express renunciation. The Commons said that King James had, even in this sense of the term, abdicated, because he, of his free will, committed those violations of the original contract, of which his abdication, so called, was the consequence. Now, if this be admitted, and King James voluntarily deposed himself, it will follow that the judicial execution of a criminal is a suicide; for the criminal voluntarily committed the crime by which his life became forfeit. Here the language of the law and of the community suggests the proper word, 'forfeiture,' which should have been applied to James the Second. *Forfeiture*, not abdication, is the true conclusion, from the violation of the original contract as a premise. To take abdication as a premise: Did King James, by abdicating (supposing for a moment that he did abdicate), thereby vacate the throne? Grotius, in the very citation of Somers, says, 'jure naturali quisque suum potest abdicare.' But a life-right only, not a perpetuity, was vested in King James, who therefore could abdicate *only the life-right, and not the inheritance*. Abdication, therefore, was not a premise from

which the vacancy of the throne would follow as a consequence. Let the word forfeiture be substituted, and the vacancy *will follow as a resistless conclusion*. It is true, Serjeant Maynard tried to prop up the false consequence deduced by the Commons with the maxim, "nemo est hæres viventis;" but the men of more enlarged sense and principles, on his side, disdained to take it up."*

These passages for the most part confirm the criticism I have ventured upon this famous vote. One of them, however, I venture to question; viz., "Let the word forfeiture be substituted (for abdication), and the vacancy will follow as a *resistless conclusion*."

With submission, if the vacancy mean more than as to James himself, the conclusion is by no means resistless. The forfeiture of a man who has but a life interest, does not, and, it should seem, *cannot*, carry with it the forfeiture of his children. Nothing short of a known and express law can effect this; such, for example, as that which attends treason; and in such a case as that before us there was no such law.

It is, besides, contrary to every principle of known justice; and even in treason can only be excused, if excusable, by the necessity of increasing the hazard to any one balancing whether to commit it or not. A father would certainly pause somewhat longer be-

* Hist. of Revol. ii. 219, 220.

fore he rebelled, when his punishment would fall upon his posterity, than if upon himself alone. So far, therefore, from its being a resistless conclusion, it is so contrary to all our notions of justice, such a sacrifice of innocence for the fault of the guilty, that without a positive enactment I should say the conclusion, *primâ facie*, was the very reverse. The Editor of Mackintosh, indeed, rather strangely supplies his own refutation, in what he says of abdication, that James could only abdicate his own *life-right*, — the only possession he had. If this be so, and James only had a life-right, what difference does the word forfeit make? How could he forfeit, any more than abdicate, what he did not possess?

In other remarks of the Continuator, his reasoning seems more sound to his purpose of inculcating the Whigs. "They took," he says, "a narrow view of the national emergency, and their own mission. They should have achieved the Revolution as a great original transaction, and sought precedents to justify it among similar transactions in the annals of mankind. Grotius, whose authority was often quoted, and implicitly respected on both sides, would have supplied a historic *precedent* of more weight than his *abstractions*. *Philippo ob violatas leges imperium abrogatum*. It appears that the republicans in the interest of the Prince of Orange, proposed that a formal sentence of forfeiture should be pronounced against James, and that the Prince should be as formally elected king." But this, says Burnet, was over-ruled in the begin-

ning. The word "forfeiture" was thrown out in the debate; but by whom does not appear.

"The Whigs of 1688," continues the Editor of the History, "were secretly as jealous as the Tories of admitting, *whilst for THEIR PURPOSES they acted upon it, the natural inherent and inalienable right of the community over its government*. Hence their adoption of the poor quibble, that James had deposed himself."

Bishop Burnet, the historian of the party, said, they meanly used the ambiguous word *abdication*, for its very ambiguity.

Now, as far as this reasoning applies to the *inconsistency* of the vote of the Convention with the facts, we concur in it. However we may differ as to the right of the community (if by that is meant only a part of it, though called by the name of *people*,) to destroy its constitution, we cannot but agree that the Commons did flinch from, nay, disavowed, those principles which their acts implied. To have been *consistent* they ought to have gone the whole length of Mackintosh's doctrine. But they did *not* go that length; and they, in terms and in form, refused to do so. By this they stultified themselves, if you please; but not the more, on that account, has any one a right to force upon them doctrines which they expressly repudiated.

With regard to the precedent in Grotius, *of more weight than his abstractions*, the "*Philippo ob violatas leges imperium abrogatum*," I know not that it will bear the construction put upon it by the Editor of

the History, that it means *forfeiture*. "Abrogare" certainly means to take away, to annul, to revoke, abolish, repeal, *destroy*, if you please; but I nowhere find *to forfeit* among its meanings. In seeking the Latin for *forfeited*, I find "confiscatus," but not "abrogatus." But granting the whole benefit of this interpretation, how will the "imperium abrogatum *Philippo*" extend the same consequences it implies for himself to his heirs, any more than the abdication, or forfeiture of James, to his? In no way, therefore, can any one, if the eternal rules of justice are obeyed, make this case of Philip, or any other that I know of, support the theory, of a natural, inherent, inalienable right of the community over its *government*. If for government we read *governor*, (that is, the individual offender, but not the lawful dynasty,) there might be little difference between us, for I have acknowledged all the rights of self-defence.

Thus much for the doctrine of Sir James.

If we now turn to Mr. Hallam, we shall find many of the same opinions, as to the necessity and justification of resistance to James, which are held by Mackintosh; but developed in a manner far more sober, and therefore more weighty. As a partizan, even to wildness in daring, we may admire, but are not dazzled, by the high-soaring flights of the *Vindiciæ Gallicæ*. In the Constitutional History, though we may not agree with him, we wait upon the reasoning of the discriminating judge.

Preliminary to the account of the steps by which

the Convention proceeded, there is an argument in Hallam, of some curiosity, on the necessity for the dethronement of James, after his power had been completely reduced. He notices, very fairly, that there was an opinion against abjuring him, "which misled half the nation:" a great admission, and diminishing much of the force of the argument founded upon the *universality* of the feeling in favour of the Revolution.

This opinion was, that the constitutional mode of redress by parliament was not taken away; that writs were ordered for one to assemble before the actual invasion; and that the sincerity of the promises of redress ought to have been tried.*

Upon this Hallam owns, that, even before the invasion, "James had made little progress; he had even sustained a signal defeat in his endeavours to place the professors of his own religion on a firm and honourable basis."† He also thinks, that, from the parliament he had promised to call, he would have encountered the same warm attacks upon his administration as had distinguished the parliaments of his father and brother. But as he was in no want of money, he would have determined more decidedly than ever to govern without them. "The doctrine," says he, "imputed of old to Lord Strafford, that, after trying the good-will of parliament in vain, the king was absolved from the legal maxims of government,

* Constitut. Hist. iii. 335.

† Id. iii. 336.

was always at the hearts of the Stuarts." He goes on to state, "that from his army being numerous, and in progress to become papists, together with his alliance with France, he might have put down insurrection, and enslaved the nation." *

Now upon this, the first thing that strikes us is, that though possibly the supposition might be true, yet the whole is assumed without proof. It is not proved that James would necessarily have quarrelled with his new parliament, and resolve to govern without one. It is not proved that his army would have become papists; or, if they had, that they would have enslaved the nation; and, above all, it is not proved, though so sweepingly stated, that the maxim imputed to Lord Strafford would have been pursued by James.

Hallam, however, thinks his suppositions sufficiently warranted to justify what was done; nor am I prepared to gainsay it. But when he goes farther, and doubts whether William absolutely expected to place himself on the throne, we look at the history, and feel that he is contradicted.

Of the Revolution, as a precedent, the opinion of this able author is remarkable. "Except in the article of the dispensing prerogative, he admits that he cannot say, on comparing the Bill of Rights with what is proved to be the law by statutes, or generally esteemed to be such on the authority of our best writers, that it took away any legal power of the

* Constitut. Hist. iii. 337.

crown, or enlarged the limits of any popular or parliamentary privilege."*

What becomes here, then, of the inalienable right to resist, cashier, and elect, *established* by the precedent of the Revolution? He thinks the success of the Revolution (from a number of unforeseen lucky incidents, such as the withdrawal of James,) ought not to seduce other nations into the sanguine persuasion that it would be easy to follow our example. As it was, he says, the return of the King from Feversham produced a schism among the revolutionists, dangerous to the final settlement; because it forced on that intimidation on the part of William, which drove his rival from the kingdom, made his flight excusable and defensive, and brought out "*too glaringly* the undeniable fact that the Convention deposed and expelled their sovereign."†

That their Sovereign was *virtually* deposed and expelled, cannot be denied; but formally, and by whom, except by William, or the fears produced by him, still remains a problem. The vote of the Convention, which simply fills a throne made vacant by James himself, denies that *they* did it.

Be that as it will, what really in Hallam's opinion was done for us by the Revolution, was not so much a change in the laws, for that he does not think was effected in any great degree; nay, he thinks that statutes even more remedial than the Bill of Rights

* Constitut. Hist. iii. 361.

† Id. ii. 343.

might have been obtained from James himself; neither was it by proving abstract, metaphysical, inalienable rights of sovereignty and resistance in the people (for that he but little dwells upon); but that it broke a spell that had charmed the nation. "It cut up by the roots," says he, "all that theory of indefeasible right of paramount prerogative which had put the crown in continual opposition to the people." Before this, he proceeds to say, "It could not be held, without breaking up all the foundations of our polity, that the monarchy emanated from the parliament, or even from the people; but by the Revolution, and the Act of Settlement, the rights of the actual monarch of the reigning family were made to emanate from the parliament and the people. In technical language, in the grave and respectful theory of our constitution, the Crown is still the fountain from which law and justice spring forth; its prerogatives are, in the main, the same as under the Tudors and Stuarts; but the right of the House of Brunswick to exercise them can only be deduced from the Convention of 1688."*

Plausible, nay, cogent and convincing, as this may to many appear, it is susceptible of much critical observation, which I venture to offer.

In the first place, that the Act of Settlement *confirmed* the rights of the Brunswick family, and that that act was *deducible* from the Convention, cannot be denied. But if it be meant that those rights do

* Hallam, iii. 345.

now "emanate from the parliament and the people," *as if by free election*, which the parliament and people could have prevented by any means, except by a *forcible departure from the law*, that is, by the right of strongest, I presume to differ from this opinion.

We have already seen that all Roman Catholics were deprived of their claims by the Bill of Rights, which was a regular act by king, lords, and commons; and, if I am right in the consequence deduced from it, the right of the Brunswick family instantly accrued. For although the Act of Settlement *acknowledged* this right, I hold that it did not *create* it; any more than the frequent acts *regulating* the succession, so often alluded to, *created*, by free and new election, the titles of Edward III., Henry IV., Edward IV., Richard III., Henry VII., Mary, or Elizabeth. The title of the Brunswick family, therefore, if this view of it be correct, did not emanate from the parliament and the people, any more than the titles of those other monarchs, whom no one certainly ever supposed to have come in by election. Let us suppose that James, instead of being held to have *abdicated*, had, by the verdict of the Convention, *forfeited* his crown, and, by a regular sentence of the Convention, had been *deposed*, and the succession given, in their own right, to Mary and Anne, in preference to William. Could the right of those princesses have been said to emanate from parliament and the people, and not from their claim as heirs? Did Anne's right so emanate, and not as heir, because she was postponed

to William, in the same manner as Elizabeth of York was postponed, or rather not noticed, when Henry VII. was preferred?

Just so we hold it was with George I., when all Roman Catholics had been set aside.

But the great advantage of the Revolution, Hallam goes on to say, or, as in his own language, he "*would explicitly affirm*," consists in that which was reckoned its reproach by many, and its misfortune by more, *that it broke the line of succession*. No other remedy, he says, could have been found, according to the temper and prejudices of those times, against the unceasing conspiracy of power. But when the very tenure of power was *conditional*, when the crown, as we may say, *gave recognizances for its good behaviour*, the several parts of the constitution were kept in cohesion by a tie far stronger than statutes,—that of a common interest in its preservation.*

Well: all this is very well as policy, but is it law? It only renews an argument that has been sometimes used for preferring a usurper upon the throne instead of the right heir, because he is upon his *good behaviour*; the rod of a defective title is kept over him; and if he offends, an avenger is always at hand, in the true prince, to keep him in order.

But were the house of Brunswick usurpers? If their religion set aside the house of Savoy, did they not come in at once as the next nearest descendants of James I.?

* Hallam, iii. 346.

Will Mr. Hallam be good enough to explain what he means by the "very tenure of their power being *conditional*?"

Suppose they behaved ill! Suppose they revived the battle of prerogative! What arms have the people from the Act of Settlement, more than they had against James? What security has the breaking of the line by the Revolution given us, which we did not possess before? How, indeed, was the line itself broken more than it was in the older times, in the reigns formerly enumerated?

All these questions, I venture to think, ought to be answered before we can say that the title of our kings, even now, emanate from the parliament and from the people in any manner different from what they did before; and I presume to question the soundness of the position, however ably supported, that the transactions of the Revolution, and the Act of Settlement, amounted not only to a deposition of the reigning sovereign, but "an *election* of a new dynasty by the representatives of the nation in parliament." *

* Hallam, iii. 347.

No. IV.

OPINIONS OF MR. FOX.

ON such a subject as we have been discussing, it would not be easy to pass in silence the sentiments of a man who so loved the liberal parts of our Constitution, and so venerated the Revolution, as Mr. Fox. Even without this love and veneration, and were his conclusions merely those of a cool and unenthusiastic judgment, that judgment was so clear and profound upon every thing which engaged it, that he would not do prudently or fairly, who, in treating any subject touched upon by him, should pass on without examining his opinions, whether in consonance or opposition to his own.

As may be expected, this extraordinary person brought to the contemplation of the events we have been examining all that could give them consequence, or ennoble their character, drawn from the warmest feeling for liberty, and the highest sense of popular rights. Accordingly, though in his History of James II., unfortunately for letters, and the lovers of history, he did little more than commence the subject of the Revolution, we find every thing that can prepare us for its panegyric, as well as the assertion of all those principles in favour of republicanism and republicans, and in condemnation of crowns and crowned heads, which those who call themselves liberals in the present day are so fond of displaying.

With all the reverence, however, which I have expressed for the abilities of this high character, and his thousand attainments both in public and private life, — his openness, his integrity, and a simplicity surprising, considering how nursed he was from infancy in both the business and pleasures of the world;—with all this, his public character was public property, and, like any other person, he is to be tried at the bar of public opinion.

When at this bar, a judge would probably pronounce, that—considering the habits and colouring of his life, for ever, almost, (whether justly or not) debarred from office, and forced (whether he would or not) into perpetual, and often very violent struggles on the popular side against the Court,—he was too much of a partizan in politics, too habituated to the hottest fire of debate in the Commons, to forget himself on the same subjects when started in the closet. Whatever his wishes to be impartial when he assumed the character of an historian, on a controversy between the crown and the people it was scarcely possible for him to put off the character of a demagogue. An able reasoner he could not fail to be; a dispassionate one he *could* not be.

Accordingly, we are perhaps not unjust in saying, that what we have found in his history, is no more than what we expected; — prejudice in his general principles and maxims; prejudice on particular facts; prejudice against James as a king; prejudice as a Stuart. He criticises the partiality of Hume for

kings, as amounting to childishness. His own fondness for republicanism as the chief source of virtue, if arguing from feeling, instead of reason, proves it, is not less childish.

Were we, however, to search for a pregnant instance of his soundness or fairness in his estimate of men or things, we could not select one more pertinent than what he here says of Hume: — "He was an excellent man, and of great power of mind, but his partiality for kings and princes is intolerable; nay, it is in my opinion quite ridiculous; and is more like the foolish admiration which women and children sometimes have for kings, than the opinion, right or wrong, of a philosopher."* Let the reader judge from this criticism of the impartiality and clearness from prejudice in him who vents it. Whoever reads merely the appendix of this great writer to the reign of James I., in which the history of the Constitution is discussed, must, from its fairness and truly philosophical character, be filled with the glaring and gross injustice (so as to excite surprise, and, I had almost said, indignation,) at the above sentences.

In the course of those vehement struggles for power, or the enforcement of popular doctrines, in which Mr. Fox passed nearly the whole of his political life, he pushed extreme principles to the utmost verge. Moderation was unknown to him. Like Lord Russell, kind, amiable, and generous in private life, his feelings on party questions became ebullitions,

* p. 21.

amounting almost to rage. Hence, from his disdain of every thing that thwarted his favourite theories on any reigning object, he overdid his part: and it was not ill said of him, that though he might sometimes drive the right nail, he drove it till he split his work. It is certain, that his devoted admiration of the French Revolution, pushed to extremity, and persisted in long after its defence had been abandoned by men equally impressed, though more rational in their love of liberty, did him great and lasting harm. This might have proceeded, and probably did so, from the serious convictions of his mind; but what can be said to the mischievous power of party over his soul, which could make so genuine a lover of his country put on the demeanour of indifference and apathy towards her in her utmost need? I allude to those appalling moments of the mutiny at the Nore. The mischief he did himself in endeavouring to set the House of Commons above the Crown by his India bill,—a measure, as to usurpation, the very counterpart of the Long Parliament,—need not be remembered. Nor will I go through the fifty-seven articles of deserved impeachment against him, so fearfully and forcibly drawn up by one who had so long fought by his side.* But the chief of them, his most suspicious and most unenglish conduct in exciting and encouraging Russia to resist the government of his own country in a dispute between them, impressed many

* Burke. A wonderful and powerful performance never answered.

even of his admirers with a sense of his rashness, which was never eradicated. In a word, nothing short of this extreme violence, with which he pushed all his principles of action till they became dangerous to all whom they affected, could have indisposed towards him, during so long a public life, myriads of his countrymen, who, from his wonderful abilities, his high and generous qualities, and utter contempt for every thing false or mean, were otherwise eager and anxious to see him at the head of the state. Soured and worn out, yet not instructed or made wiser, by this want of success, he only became more imprudent, in very anger, as it were, that so many essential great qualities to obtain the suffrages of his country should fail. Hence, at one time he pouted like an angry lover, and thought to avenge his wrongs upon his country by abstaining from her service, when he seceded from parliament. At another, if he did not (as was eloquently said by one who knew the constitution quite as well as himself, though he took a very different view of it,*) *unfurl the standard of rebellion*, it was not his fault [that the people did not rise in arms against the laws, since he told them plainly, that it was only a matter of prudence (and therefore, by implication, not of duty,) that made them obey them.

From this sketch of the violence which formed the derogations from an otherwise perfect character in this great man, we perhaps might suppose that

* Lord Colchester, when Mr. Abbot.

his opinions upon the events, transactions, and characters of the period which he chose for his theme, were by no means neutral. On the contrary, that they would be what we find them, tinged with misrepresentation, and bent and biassed to the popular side, in all the ardour, and sometimes, in all the blindness of a partizan.*

Let us see if this animadversion (a bold one I allow)

* The following are opinions upon this extraordinary and gifted person, not more just than candidly expressed, and which it may not therefore be unacceptable to the reader to re-peruse.

"With perfect rectitude and impartiality of intention, a man in a particular political situation can hardly form impartial opinions; maintaining with his party certain general political positions, and hearing, in the society of that party, a set of particular sentiments, which the interest of some, the enthusiasm of others, and in general the very war of opposition which they have maintained in common, have tended to heighten and confirm: in such circumstances it were scarce to praise a man's heart or disposition to suppose him perfectly unbiassed: his *very virtues*, friendship, confidence, and social affections are likely to betray him.

"Those virtues form the panegyric of Mr. Fox with his friends; they have been acknowledged by the most strenuous of his opponents. In the midst of those friends, a man with less pliancy of disposition, and less warmth of affection, than Mr. Fox, is inclined to imbibe opinions unfavourable to the strict impartiality of historical discussion: he breathes an atmosphere of party, with which the constitution and temperament of his own mind can hardly fail to be affected.

"Mr. Fox's habits and political contests were also unfavourable to historical impartiality. A man accustomed to debate is too often apt to argue more for victory than for conviction; and to look more to the advantage or fame of defeating his adversary, than to the justice of the cause for which he fights. He has been accustomed to contend and to dispute, rather than to discuss and to deliberate; and will much more easily form or refute arguments, than set up or weigh opinions."

Rose's Observations on Mr. Fox's Historical Work, Introduct. p. 9.

is undeserved: and the better to accomplish the object, it will perhaps be no more than right to follow Mr. Fox's own divisions of his subject.

In the introductory chapter of his work, he of course notices, though he does so very cursorily, the civil wars, "so *intemperately*," he says, "denominated *rebellion*, by Lord Clarendon."* "That they (the parliament)" he adds "according to the general principles of morality, had justice on their side, cannot fairly be doubted."

Now for one, I not only doubt, but, for reasons already given, I am convinced the other way.

That many however may agree with him in this, cannot be denied. But to those who think the observation misapplied, and proceeding from the ultra modern doctrines of the rights of insurrection, not founded upon the real nature of the facts, I can only refer for proof to the discussion of the conduct of the Long Parliament given in the body of these strictures.† From that conduct, if any one can doubt that rebellion is the true and proper epithet belonging to it, from the epoch of the nineteen propositions, little likely is it that we can agree with him.

The defence of those of the propositions that concern the militia, is such as might be expected from the extreme opinions of Mr. Fox. "Though there may be more difference of opinion," says he, "upon their (the parliament's) proposed regulations in regard to the militia, yet *surely when a contest was to be*

* Hist. Jas. II. p. 11.

† Supra, 72, et infra.

foreseen, they could not, *consistently with prudence*, leave the power of the sword altogether in the hands of the adverse party."*

Here it is obvious that the question is begged by extreme Whiggery; for the soundness of the supposition must depend upon the justice of the quarrel. If it were not just, the reasoning would be that of a burglar, who, being resolved to rob a house, first murders the master, as, *surely* where resistance is foreseen, it *could not be consistent with prudence* to leave him alive to defend his property. Unless the Commons, then, had clearly a right to ruin the monarchy, they were, in the demand of the sword, in the situation of this burglar. If Mr. Fox thinks they had this right, which probably he does, his defence of them is sound according to his own principles. If not, never was so weak an excuse espoused by so powerful a mind. But exclusive of this, what is to be said to the position of Blackstone, before alluded to, though the King might not legally be invested with the power of the sword, it was clear the Commons had no right to it at all. Mr. Fox's answer reaches this also. As there was to be a contest, it would not be consistent with prudence, not merely to deprive the King of it, but not to give it to themselves. So said Macbeth when he killed Duncan's grooms, whom he accused of murdering their master, for

"It would have anger'd any heart alive,
"To hear the men deny it."

* Fox, 10.

In Mr. Fox's language, it would not have been consistent with *prudence* in Macbeth to have left these grooms alive.

In the case of Lord Strafford, whose attainder he condemns, Mr. Fox is more just; nay, admirably forcible. Yet even here he lets out much of the lawfulness, or rather praiseworthiness, of insurrection. "If such cases have existed," he says, (meaning punishment by death in violation of law,) "they must have been in instances where trial has been wholly out of the question, *as in that of Cæsar and other tyrants.*"*

Mr. Fox then justifies the assassination of Cæsar, or any other king who sets aside the laws, for such is the usual definition of a tyrant; and as James could not be tried, according to *him*, he might be dispatched; and so, *any* king. For as the people (that is, any body who chooses so to decide,) are to be the judges when the laws are exceeded, any man who sits upon a throne, or, indeed, any private man, if guilty of an offence which cannot be tried, (which is possible,) may be cut off by private assassination.

This goes beyond Mackintosh, or even the Regicides, for both those parties were for *trying* the sovereign, though, the thing not being usual, they did not know how.

But if this exemption from trial justifies assassination, what becomes of the people themselves, acting upon Mr. Fox's maxim, that in a given case it was only a matter of prudence whether they should obey

* Fox, 11.

the laws? They were in that case sovereigns, and above the laws, and could not be tried. Were they to commit excesses, therefore, they might be killed without trial.

To such dilemmas does wild theory, in warm imaginations, lead the best of us.

Mr. Fox makes a question, though he does not decide it, whether the suspicion of the insincerity of Charles I. was not a justification of his rebel parliament—(rebel we must always call it, after the nineteen propositions.) Of course he holds that those suspicions amounted to a moral certainty.* Why? Because he violated the petition of right.

No doubt he did, and his conduct was indefensible. But those violations had been committed ten years before. Their consequences were such as must have opened his eyes, for dearly had he paid for it, by allowing himself to be bound hand and foot by his dutiful Commons, who had annihilated, one after the other, every grievance complained of; had, in their turn, been guilty of many gross usurpations; had forced him to the great blot of his life, the joining them in the murder of Strafford; and had given the finishing stroke to their own power, by depriving him of the incontestible, as well as most potent prerogative of his crown, that of dissolving them.

These circumstances it would only have been candid in Mr. Fox to have mentioned, when he asserted, that of the insincerity of this King there was

* Fox, 13.

a moral certainty, with a view to justify the proceedings of the usurpers. For though he says it is a question, whether the failure of the treaty of the Isle of Wight is to be imputed to the suspicions *justly* entertained of the King's sincerity, or to the ambition of the parliamentary leaders, he takes no notice at all of any of these circumstances, which, added to years of experience and of misfortune, after the offence against the petition of right had been committed, must have been, and were, so influential in producing a change of character. Still less does he for a single moment suspend his attacks upon the King, or turn aside to examine the question himself had started, as to the ambition of his enemies,—an account of which has been given in the course of these strictures.* This, in an author claiming to be an historian, is a great fault; for of an historian impartiality is the most essential of all his qualifications; and it has well been said, that one of his greatest duties is, not merely to speak the truth, but not to conceal it. Are we wrong, then, in thinking that Mr. Fox, great as he is, is, like Mackintosh, on paper, only a great partizan.

We come now to, perhaps, the most important observation of his whole work; and that, I own, is astounding. It is, that that gross murder of the King,

" Murder most foul, as in the best it is,

" But this most foul, strange, and unnatural."

* Supra, p. 72, et infra.

that murder, which not only destroyed the life of a king, but tore up by the roots every security of law, every tie which holds society together,—poisoned the sweet fountains of justice, and reduced all principles of government to the maxims of the assassin,—that that murder was a far less violent measure than the attainder of Strafford.

That attainder, as all *ex post facto* laws are, is a bad thing, all must allow; and Mr. Fox, with his usual acumen, when not mystified by party feeling, has eloquently demonstrated, that nothing can justify it, but the impossibility of bringing a delinquent to trial, whom it was also impossible to render harmless without it.

Is it not remarkable that this favourable reasoning, which was thus extended to Strafford, was so far denied to Charles, that his execution (God knows, a hundredfold greater violation of law than Strafford's) should be held by this enlightened person to be a less violent measure?

But one was a *king*, the other a subject. Is it in this difference of denomination,—in other words, in the prejudices of Mr. Fox,—that we are to look for the difference in his opinion? Shall the illegal execution of a subject, amenable to law, be a cause of greater lamentation than that of one whose life no law can reach, because, and merely because, the last is a king?

I can account for this difference from no other circumstance.

The reasoning and remarks of the historian, as he goes along, I should say, are curious, and certainly characteristic.

He says, the execution is to be considered in two points of view. First, was it not just and necessary? Secondly, was it likely to be salutary or pernicious?

As to the first, he cites Hume as having given, he says, "not perhaps intentionally, the best *justification* of it, (mark the word!) by saying, that while Charles lived, the projected republic could never be secure." Had he said *explanation*, instead of justification, our quarrel with Mr. Fox had probably been less. As it stands, to destroy the monarchy, and establish a republic, by the murder of the King, though not absolutely held to be the *justification* of the murderers, is yet, in Mr. Fox's mind, the *best justification* that has been given.

In the same strain, in canvassing what, *as republicans*, the parliament had a right to do, or were wise in doing, he says, that "to take away a life in self-defence, the danger must not be problematical and remote, but evident and immediate." *

Upon this it is to be observed, that, though professing to be the reviewer of the times, he totally passes by the question, of the right in the parliament to constitute themselves republicans; but merely discusses what it was competent for them to do when they had assumed that character.

* Fox, 14.

This is, again, the case of the burglar I have supposed. What should we say to a magistrate who had to sit in judgment upon such a culprit, who, instead of sentencing him to punishment, should pronounce, that being afraid of being killed himself in breaking open the house, he killed the master of it in self-defence; and only qualified the right to do so, by saying, the danger from the master to the robber was evident and immediate.

I do not by this mean to say that Mr. Fox absolutely approves or defends the parliament for destroying the monarchy; but to point out how completely he passes over that question, and confines himself to the expediency of putting the King to death when in their power, without at all discussing the legality of the measures by which that power was attained.

It may be said, this was not Mr. Fox's object; and it is that precisely of which I complain. As a matter of curiosity, a very loyal man might canvass the question: professing to write history, no unprejudiced man would dare to pass it by unnoticed.

Having assumed this privilege, however, he gives full scope to what he supposes it would rejoice a republican to contemplate; and granting that the King was to die in order to fortify the new order of things, he glorifies Cromwell for the manner of the sacrifice. Coolly he observes, that "*among the modes of destroying persons in this situation*, (one would suppose he was talking of destroying rats,) there can

be little doubt but that adopted by Cromwell and his adherents *is* the least dishonourable.”*

The word *is*, is here remarkable. Had he said *was*, it might be thought merely a part of the passing narration; but *is* immediately converts it into a rule of conduct proper to be used on a like occasion,—as if the occasion itself were usual, or of frequent recurrence, in the history of nations.

He goes on, in the language of the fanatic Harrison, to laud it as it deserves. “Edward II., Richard II., Henry VI., and Edward V.,” he says, “had none of them long survived their deposal; but this was the first instance, in our history at least, where, of such an act, it could be truly said, that it was not done in a corner.”†

After this, though with a redeeming accompaniment, that the death was not necessary, he indulges, not without complacency, in a notion, that it has possibly, “as much as any other circumstance, served to *raise* the character of the English nation in the opinion of Europe in general; that, even in the minds of those who condemn the act, the impression made by it has been far more of respect and admiration, than of disgust and horror.” He adds, in praise of Cromwell, that the guilt of the measure is what most men would have incurred; “what there is of splendour and of magnanimity in it, I mean the publicity and solemnity of the act, is what few would be capable of displaying.”‡

* Fox, 15.

† Id. 15.

‡ Id. 17.

All that we observe upon these passages is, that, however critically and philosophically true, to present them in a history without an accompanying representation of the infamy belonging to the same character, is unfair and reprehensible. Cromwell was infamous, as well as great: infamous, from the meanness of his hypocrisy, from his false pretences, his indifference to blood in support of an execrable ambition, which broke all ties, and laid liberty prostrate; that liberty which he only espoused in order to raise himself upon her ashes. That no one word, therefore, of all this should be hazarded by a writer claiming to lead our opinions in estimating the true nature of the events he reviews, while the dazzling parts of his hero's character are alone recorded, and dwelt upon with a seeming gust and triumphant panegyric, is, to a cooler mind, seeking only for truth, not less melancholy than surprising.

Many thieves, many assassins, many impostors, many tyrants, have had great qualities,—Cæsar, Muley Moloch, Alva, Richelieu. Even Colonel Blood, in endeavouring to steal the crown, and, with a refinement of vengeance and excess of daring, attempting to hang the Duke of Ormond at Tyburn, contrived to inspire, by the boldness of his enterprises, an opinion of greatness, which produced his pardon. But should we, on that account, hold him up only as an example of bravery and contempt for danger, and not also as an atrocious and infamous ruffian, unworthy the impunity he met with.

Cromwell was, as we have said, a great, but he was also a bad man. Mr. Fox thinks fit to speak of him only in his first capacity, and to enlighten his posterity by dwelling upon his greatness alone: commending him to our admiration, not our execration. But, could this be passed over, what shall we say to a man, whom his friends and admirers boast of as the best versed of his time in knowledge of the Constitution, who gravely asserts, that the blame of Cromwell's usurpation was founded, though not exclusively, in prejudice. "The great talents of this extraordinary person," he observes, "had supported, during his life, a system condemned equally by reason and by *prejudice*: by reason, as wanting freedom; by prejudice, as an *usurpation*." Thus, according to this great authority on the nature of the government and the constitution, to condemn the usurpation of a throne by a subject, is prejudice. One can hardly believe the words were written by a reflective man, much less by a publicist, which convey this sentiment to the mind.

He is more reasonable, and less dangerous, in his panegyric on the success of Cromwell's administration. Our complaint, however, here is the old one. He treats him as a hero only; not as a tyrant, a rebel, and a usurper; and hence proves the old and sensible maxim:

"Decipit exemplar vitii imitabile."

"It must be confessed," he says, "to be no mean testimony to his (Cromwell's) genius, that the *splen-*

dour of his character and exploits render the æra of the Protectorship one of the most brilliant in English history;" and then, that nothing may be wanting to his hero, he adds, that among those who raised themselves to supreme power by force of their genius, (he says nothing of his wickedness, his crimes, and his murders,) that, even in respect to *moral virtue*, with the exception of the most degrading of all human vices—hypocrisy, he will be found one of the least exceptionable.*

This is so startling that we cannot help pausing for a moment, to ask ourselves whether this can possibly be the language of Mr. Fox? Well, at least, has Mr. Rose, in his examination of his history, observed, "that he has thrown over the usurpation of Cromwell a veil, which, speaking only of its *energy*, and not of its *injustice*, naturally interposes between that and our feelings. He has given the same air of grandeur to the execution of Charles I., which he favourably compares with the unjust sentence on Strafford, without stating the distinction between the violation (though gross) of the laws and forms of criminal procedure in the one case, and the overthrow of the constitution itself, from which those laws emanated, in the other."†

It may be supposed from the bias of Mr. Fox's

* This reminds one of a quarrel at Billingsgate. One woman said to another, "I grant I am a thief and a ———; but barring that, I am an honest woman."

† Rose's Remarks on Fox's History.

mind, and all that we have seen of his opinions on government, that Monk was no favourite of his. Accordingly, he says, "that after Cromwell's death all was in the army, and that army had fallen into the hands of one than whom a *baser* could not be found in its lowest ranks."*

Is this sober, philosophical judgment, or the declamation of the opposition benches in the House of Commons?

The virtue of Monk in contributing what he did to restore the monarchy, may be certainly questionable: that he was full of wariness and concealment, taciturn and close, is true. Yet so was, perhaps, the greatest man of his time, the first Prince of Orange, the heroic and noble founder of the Dutch republic, whom Philip feared more than all the world, and who, from his guardedness in talking, was sur-named Le Taciturne. That Monk went all lengths with Cromwell is also true; and if he had not remarked that the prevailing spirit of the nation was to put down both the parliamentary and military usurpers, and restore the King, that he might have been tempted to become one of them is not improbable. But in all this he was no more base than almost every actor and every anarchy in that anarchical time. It certainly should not seem from this, that he was baser than the basest, as Fox represents him, any more than for that other reason given by Mr. Fox, that, having gained his rank and reputation

* Fox, p. 20.

in the service of what, *however falsely*, he called the cause of liberty, he made no scruple to lay the nation at the feet of a monarch without a single provision in favour of that cause.

Well, did he do more in this than the high-minded Holles, or those thousands who had fought in the same cause, and rued it; and will this subject them to the imputation of being the basest of mankind? Does not Mr. Fox himself imply that the cause was *falsely* called liberty; and might they not repent, and think with him on that point, without being subjected to this violent abuse? Then on what is this terrible invective founded?

On his conduct on the trial of Argyle? In that trial, while other proof had failed, and he was nearly acquitted, it is said that he sent down letters, affirmed to be written to him in confidence by the marquess, when they were both republicans, and, as is asserted, friends. These letters, according to Burnet, convicted him.

That such conduct should call up the ire of a man, himself the reverse of base, is not wonderful, though it is not more than upon a par with the baseness of the Vanes, who made use of notes (taken without his knowledge) of his opinions at a privy council to destroy Strafford. But is the fact respecting Monk as Mr. Fox states it? or has this most scrupulously anxious of all historians, as he is represented by his noble editor and nephew, been guilty of rashness in his indignation, and covered a character

which, perhaps, for other reasons he disliked, with unmerited abuse?

Even supposing the fact, as Monk was now at the acme of his fortune, loaded with honours and wealth, what are we to think of the accuracy, any more than of the justice of the observation, that he "surpassed in infamy those wretches who to save their own lives are sometimes persuaded to swear away the lives of their accomplices."* The observation is not correct, for the Duke being not under this necessity to save his own life, or save any thing, his proceeding could have had no motive of infamous self-interest. But is it even correct? Let us examine, and say whether the eminent share which he had in restoring a Stuart may be supposed to have had any influence in urging Mr. Fox to make this charge, without inquiring farther for a proof of it than in the assertion of such a man as Burnet.

Of Burnet's fidelity, or rather infidelity, as to many of the facts he relates, in what Lord Dartmouth called "The Bishop's *Story Book*," with the exception, perhaps, of Mr. Fox, there seems to have been but one opinion. The only question is as to his sincerity in his own belief of them; and that question one would be inclined to decide in his favour. For such was the vehemence of a sanguine temper, and a partizanship equal to that of Mr. Fox or Mackintosh themselves, though without their ability, that, even when the pen was in his hand to

* Fox, 201.

alter (as it is said he did) characters and incidents as might best suit his feelings, we are told, and it is pretty clear from the internal evidence of his work, that he was too prone to believe what he wished, and exercised a sort of honesty in deceit.

This he himself confesses, or something very like it, in what he says of his sharpened feelings against some of his brethren of the church. The passage is very frank, and as follows:—"Indeed, the peevishness, the ill-nature, and the ambition of many clergymen, have sharpened my spirits perhaps too much against them; so I *warn* my readers to take all I say on those heads *with some grains of allowance*."* On this the rogue Swift makes a note,—“I will take his warning.”

Again, Mr. Godwin, of Baliol College, transcribes in the margin of his copy of Burnet's History, now in the Bodleian, the following letter from Lord Ailesbury to Mr. Addlestrop, concerning the death of Charles II. “Bishop Burnet is a notorious liar from beginning to end, to my knowledge. When we came to the bedside we found the Queen there, and the impostor says it was the Duchess of Portsmouth.”

Again, in regard to Magdalen College, the Bishop says the order for the restoration of the fellows was *countermanded*. Mr. Godwin says, “This is false;” and relates that the Bishop of Winchester went to Oxford, and fixed up a citation to restore the fellows; but, being summoned to London to attend the birth

* Preface to fol. edit. 1724, p. 3.

of the Prince of Wales, he left it undone, and was *reproved* by the King for coming without having first restored the fellows. Dr. Clarke gave this account to Dr. Jenner, and it is preserved among his books in Worcester College library.*

These passages I have given, more for their curiosity, than as amounting, *without other proofs*, to such evidence of the gossiping credulity of the Bishop, as ought to deprive him of all his authority as a narrator. What he states of his own knowledge we ought not to doubt, though that might be much coloured by his prejudices; but what he relates upon the mere report of others, though set off with an air of belief, as if it were certainly true, every thing we know of his officious meddling character, and unbalanced party feelings, forbids us from crediting merely because he wrote it; and such seems to have been the opinion of many of his contemporaries. Mr. Fox gives him more credit than most, yet for a reason that appears more to support than oppose the general opinion. Speaking of Seymour's *suggestion*, in his speech upon a grant to James, to inquire first into the validity of the elections, Burnet says, he *made a motion* to that effect; which was not correct; and upon this Mr. Fox makes the following observation:—"It will be found, as well in this, *as in many*

* The above is taken from the *European Magazine*, January and April 1795, which authority, having never seen the documents referred to, I give, lest I should myself be suspected of the same crime charged upon Burnet.

other instances, that an *unfortunate inattention* on the part of the reverend historian *to forms* has made his *veracity* unjustly called in question.*

Authority would have been a better word, for nobody suspects him of *wilful* falsehood; only a little *heightening* of facts, according to his humour, when, according to his own expressions, above given, his *spirit*; *were sharpened* upon a particular object. But even inattention to *forms* carries often along with it matter that may involve the very essence of truth. If regardless of forms, why not of dates, perhaps of names; and how important they may be, we know. Voltaire was this sort of historian. He once abused a person for setting him right as to the time of a certain battle. "Blockhead," said he, "was not the battle fought?" "Yes!" "Then what signifies *when* it was fought."

Upon the whole, though Mr. Fox throws his broad shield over the Bishop, it does not entirely cover him. Burnet, therefore, was the last man in the world whose hearsay (for it could have been no more) a man, *intending* to be so candid as Mr. Fox, should have vouched as an authority for such revolting language as he has applied to Monk. The extraordinary anxiety after the truth of every thing he should insert in his history, ascribed to him by his noble editor, one would have thought would have induced him to have made every inquiry, and ransacked every accessible document, before he branded

* Fox, 149.

a man in the manner in which he has branded the Duke of Albemarle.

Did he make this inquiry? If he did, with his asserted research and incontestible acumen, how could the authorities referred to by Mr. Rose in his forcible, and, I think, unanswerable refutation of Burnet's account, escape him?

The Bishop was but eighteen years old when Argyle was tried and condemned, and, with all his precocity and meddling, could hardly (and, indeed, he does not pretend to it,) have known of these letters of Monk, and their effect, of his own knowledge. His assertions, therefore, are from hearsay; and his proneness to adopt hearsay for what he wished, we have already discussed. That he wished to inculcate Monk is known.

Still, however, the hearsay might be true; but if so, being of no ordinary matter, but of the most solemn and vital proceeding that can belong to the actions of men, nothing less than a trial for life, ending in the deprivation of it, in the case of one of the greatest nobles of the land, how is it possible that no record was made of this decisive evidence, upon which, according to the Bishop, the condemnation turned?

The question was amply discussed before Mr. Fox wrote; and he was, or was not, aware of the discussion. If he was, though he might not have been convinced by it himself, he was bound, in duty to the justice he worshipped, to lay it before his readers.

If not, what are we to say of his anxiety for the strictest inquiry before he hazarded a fact, much more one upon which such an excess of vituperation was founded.

We would willingly shorten this discussion, by referring merely to the argument (a most able one) in Mr. Rose's book*; but, to satisfy the reader, we may perhaps be excused for laying before him an outline of the particulars.

In the first place, Woodrow, an historian attached to the Presbyterian cause, to which Argyle was a martyr, who lived but a short time after the event, and who was remarkable for industry in searching records, especially those affecting the leaders of his party, is *entirely silent* on the subject of the letters.

In the next place, search was made in the records of the parliament, council, and justiciary, but, from a chasm in the documents of the time, nothing was found.

This proves nothing one way or the other; but a collection was in Mr. Rose's possession, supposed complete, of all the publications during the civil war and some years after the Restoration, several of them written after the death of the Marquess, by devoted friends, *giving accounts* of what was most interesting respecting him, and *of what passed at his trial*, to his latest moments, in no one of which is the remotest allusion

* See Observations on Mr. Fox's History, pp. 21, 22, 23, 24, and Appendix, Nos. 3. and 4.

to papers having been read in aggravation of his offence, previous to his sentence

What is still more convincing, in the British Museum are no less than seven different tracts respecting the trial and execution of the Marquess, published in London and Edinburgh, one of which is entitled the last proceedings against him, containing, *inter alia*, a speech of his, in which he denies having had any epistolary intercourse with Cromwell, or any of the sectarian leaders of his army.*

The next proof is, that there is nothing in Thurlow relative to these letters; and a stronger one still, that the newspapers of the time have been searched, in which particular accounts of what passed upon the trial at Edinburgh are given *from day to day*, and not a syllable of this communication from Monk is mentioned.

Such is the strength of the negative proof against the supposed fact. And what is there opposed to it?—the hearsay, and therefore loose assertion of the gossiping Bishop, who himself, on the very subject, is convicted of an error, showing how little accurate he could be on the identical case. For he says, the Marquess wrote to the King the day before his execution: whereas the date shows it was on the very morning that it took place. This may be said to be

* We presume the speech was *after* condemnation, though Mr. Rose does not say so, for otherwise it would not be proof, as he might have made the denial to save his life.

of not much importance, and to his veracity it is not. To his reputation for accuracy in reporting, it is of the greatest.

But the argument of Dr. Campbell seems most decisive of all. Campbell, both from his clanship and his private feeling, was said to be most favourable to his ancient chief. Yet he says, that the assertion of the Bishop cannot be true; and he winds up his argument upon it by noticing that the Marquess, in his letter to the King, protesting his innocence of all connection with Cromwell's government, which the letters to Monk are said to have proved, appeals to God for the truth of his assertion. This was on the morning of his death. Could he have done so just after the production of letters which Burnet asserts convinced his friends, who would have saved him if they could, but staid away from the judgment, after such irresistible proof.

If Mr. Fox was aware of these arguments, it seems that they did not deter him from venting this calumny upon the restorer of the Stuarts. It were vain, therefore, to rely upon other arguments drawn from the conduct of the latter towards other delinquents. Yet we must not omit what Mr. Fox either did not know, or strangely thought it no set-off against his opinion, that Monk was the basest of mankind, because he contributed to destroy one fellow delinquent. "He was," says the writer of his life, "an advocate for mercy to the regicides in the House of Lords: though no regicide himself, he was silent on the bench when

commissioned to try them; and he saved Sir Arthur Haslerig's life and estate, (the bitterest personal enemy he had in the world,) by owning a promise to him, which, some say, he never made."*

Lastly, it appears, says Campbell, from Thurloe's papers, that Monk never considered the Marquess as a friend to Cromwell, but always represented him as the secret friend of the King, and an enemy to the Protector's government.†

I own these considerations, so many in number, and so powerful in argument, incline me to reject the story in Burnet as one of those belonging to his scandalous chronicles; and if so, to think Mr. Fox's opinion and language any thing but warranted by reason or the fact. If he was aware of them, he was most unjust in not placing them before his readers: if ignorant, he was at least wanting in the research and industry of an historian: and we find in it one proof more that his book is only that of a partizan, which, without the splendid authority of his name, could not be dignified with the attributes of history.

There was another reason assigned for this outrageous charge upon Monk. He acquiesced in the insults so meanly put upon the illustrious corpse of Blake, under whose auspices he had performed the most creditable actions of his life.‡ This, if Bishop Kennet's account is to be credited,—and it is to the

* Skinner's Life of Monk, quoted by Campbell. See Rose, Appendix, No. 3.

† Ibid.

‡ Fox, 21.

full as much an authority as Neale's History of the Puritans, where it is named,—is not a faithful relation. The remains of Cromwell and Ireton were insulted, and, we agree, meanly, but not those of Blake. They were removed from Westminster Abbey, but re-interred, says Kennet, with great decency in St. Margaret's churchyard.* And thus the proofs of the only two facts on which Mr. Fox thought fit to found an accusation against Monk, of the very worst kind, couched in the most intemperate language, have completely failed. It must proportionably lower his authority even as a *partizan*, for historian, with so many omissions and so many misrepresentations, we cannot allow him to be.

What credit for either the impartiality or the enlightened views of government, or even the common knowledge of things which ought to belong to an historian, can be awarded to him who calls the soldiers of a country, employed by its government to repress insurrection, by the odious name of "authorized assassins?"†

* Kennet's Histor. Register, iii. 536, apud Rose.

† We were so startled with this, that we almost believed we were mistaken; and, as others may think so too, we give the passage in question. Speaking of the disappointment of Argyle's hopes of being joined by the persecuted in Scotland, he says, "those even whose situation was most desperate, who were either wandering about the fields, or seeking refuge in rocks and caverns from the *authorized assassins* who were on every side pursuing them, did not all join in Argyle's cause with that frankness which was to be expected." (page 197.) These men were the old covenanters and conventicle men, who were persecuted, (I use the word as Mr. Fox would have me) by a cruel

The admirers of Mr. Fox may attribute this to his warmth and indignation against James, though even that was not justified by any thing James had then done as King, for it is in the account of Argyle's invasion, when he was scarcely warm on his throne, where he was the undoubted legitimate monarch, and had as yet been guilty of no tyranny. But allowing that the feelings and principles of the politician ran away with the author, is it the part, is it the duty, is it even becoming in an historian,—will it not overturn all his authority, not merely as such, but as a writer pretending to any thing but the power of invective,—so to misal, so to calumniate, the servants of their country, who only obeyed the laws in repelling insurrection, however praiseworthy that insurrection may be deemed by the calumniator?

When we read this aberration of Mr. Fox from all the most received notions of what is due to the

government, whose acts I am not the one to defend. But to call the soldiers who only executed the orders of their lawful governors, assassins, breaks down all principle, and all meaning in words. It is the rant of rioters suppressed. He might as well have called the executioner, when he does his duty, by the same name.

As to executioners, indeed, he had before called the condemnation of the military officers who had attended the trial (and of course, upon the same principle, the executioners) of Charles I., "a violation of every principle of law and justice." (p. 24.) How then can he convert the soldiers who performed their duty to their lawful government into assassins? One of these military officers, be it remembered, Axtell, who commanded the guards at the trial, ordered his men to fire into Lady Fairfax's box, because she denied the act to be that of the whole people. He, to be sure, then, was not an assassin, only a regicide.

character of a soldier, acting in his country's service, and see him vilify such a character with such epithets, we are seized with astonishment that a mind so great, an understanding so acute, and abilities every way so resplendent in all other things, should, from the blindness of party feelings, so fail in propriety of thought. For this, and a multitude of similar impressions, we are forced to dethrone him from the place he held in our minds, and to pronounce, reluctantly, that, from very passion, his authority is gone.

We say reluctantly, because there are some passages in his book which revive all our notions of his natural disposition and the elegance of his mind, and tell us, in delightful characters, (*O! si sic omnia*) how well he deserved all that his friends said of him.*

But these gleams are evanescent: the political bias perpetual. Thus, the condemnation of Argyle and Weir, the latter for associating with a rebel whom it was not *proved* that he knew to be such, resembles, he says, more the acts of Tiberius and Domitian,

* Take for example the following of Temple, in which, perhaps without meaning, but probably not without knowing it, he portrays himself. "When he had reason to think that his services could no longer be useful to his country, he withdrew wholly from public business, and resolutely adhered to the preference of philosophical retirement, which in his circumstances was just, in spite of every temptation which occurred to bring him back to the more active scene. The remainder of his life he seems to have employed in the most noble contemplations, and the most elegant amusements; every enjoyment heightened, no doubt, by reflecting on the honourable part he had acted in public affairs, and without any regret, on his own account, (whatever he might feel for his country,) at having been driven from them."

than those of even the most arbitrary governments.* And yet he allows the sentences were not carried into effect. One escaped; and the other, he tells you himself, was reprieved. Did Tiberius or Domitian ever reprieve?

His broad condemnation of the sentence against Russell we have elsewhere considered; and his violent declamation against the King, the ministry, the court, and the jury, for the prosecution of Sidney, we are so far from blaming, that it must be shared by every lover of justice. Even that he carries it a little farther than may be precisely warranted, as well as quarrels warmly with Hume for the thinness of the veil he throws over the King in that execrable affair, neither surprises nor revolts us. Still, as usual, he pushes it too far in this,—that he argues as if the King and the government, *knowing* the defect of evidence, had planned *beforehand* all the atrocities of the lawyers. That Sidney was, at very least, as guilty as Russell, or any other of the Council of Six, (perhaps a little more, for he planned and conducted the communication with Scotland,) there can be no moral doubt; therefore there was at least moral certainty in the minds of the King and his ministers, that Sidney designed rebellion; and if so, that they should *order* his prosecution, leaving the lawyers to conduct it, is neither surprising nor blameable. There is no

* p. 48. What the phraseology exactly means I don't know. Were not the governments of Tiberius and Domitian arbitrary? Did not the murders of the popish plot equal them in injustice?

proof adduced by Mr. Fox that, in this *first instance*, they did more; and his accusation of them in that part of the procedure which concerns the evidence is therefore not warranted. I notice this, however, only to show how much of a piece, as to violence and extremes, all his censures are. God knows the objects of them here have enough to answer for; for though they might not contrive the snare beforehand, yet, after the sentence, by executing it, they made the iniquity their own.

With his attack upon the Oxford decree we have this quarrel, that even if it were (as it is not) revolting to truth, to history, and to common sense; why churchmen will “abuse the name of religion,” more than politicians or demagogues the name of liberty, when it suits their policy, we are yet to learn, and certainly shall not learn it from the treatise before us.*

A minor, but yet a fault, though belonging more to criticism as to the style and method than the matter of the work, is the comparison of the doctors of Oxford, when they framed this decree, to Dogberry and Verges, when they declared that to receive a thousand ducats for a false accusation was *flat burglary*. This, diverting over a table, is unworthy of the dignity of history; though, but for the excellent taste which Mr. Fox possessed, and the extreme anxiety he is said to have shown to keep his composition true to the

* Fox, p. 56. “Such the manner in which churchmen will abuse, when it suits their policy, the holy name of that religion,” &c. But see this fully discussed, No. vii. in the Appendix.

simplicity of remark and narration which he deemed essential to the character of an historical work, it would not be noticed.

To proceed with the examination of this storehouse of exaggeration, let us consider what is said of the memorable ebullition of Charles on the suicide of Essex, "that he owed a life to his family;" implying that he would have pardoned him had he been guilty.

Mr. Fox thinks, seemingly without a shadow of reason, though with abundant prejudice, that this declaration being made *after* Essex was dead, *and not followed by any act evincing his sincerity*, is not to be believed by men of sense.

It is plainly not believed by Mr. Fox, but why not by others? What acts would he require? "Some mark of kindness," he says, "to the relations, or some act of mercy to the friends of the deceased!" Why so? If I tell a man I am sorry for his father's death, am I not to be believed unless I provide for the son? This is going pretty far. Perhaps, to produce belief in the historian, it would have been necessary to pardon Lord Russell, or advance Essex's son in the peerage! The true answer is by a question, Did Charles, by implying that he would pardon Essex, because his father had died for him, promise to pardon any body else, or prefer Lord Essex's family? If not, why was the non-performance of what never was promised to be the proof of a sincerity, otherwise to be doubted?

The opening of James's reign is no more than characteristic of the favourite notions of the writer, but contradicted, I conceive, in the minds of most readers of history,—that the new King's ruling passion was despotism rather than popery, and that the one was subservient to the other. Hence the gratuitous assumption, always made by prejudice, that the pleasure James took in the popularity which greeted the commencement of his reign, was owing, no doubt, (why no doubt?) to its being a powerful medium for establishing his system of arbitrary power. With regard to the Roman Catholic religion, he says, it is by no means certain that he yet thought of obtaining for it any more than a complete toleration.

In the same spirit, writing of the motion for an address to execute the laws against dissenters, he says, "the *zeal for persecution* in the Tories made them fall into the snare." Here the character for a zeal to persecute, is the assumption of the writer, for he gives no proof of it. Yet he possibly would feel, and has felt aggrieved, when any partizan on the other side has talked of Mr. Fox's zeal to unfurl the standard of rebellion. At any rate, what spirit of persecution in Tory members of parliament ever equalled the headlong infamy of the Whig persecutions in the Popish Plot, or of the Long Parliament?

In his observations on the bill for the preservation of James's person, which certainly extends the law of treason most nefariously, though it never passed, he

quits history altogether to vent a little of old House of Commons rage against some of our modern statutes, made to repress a spirit of rebellion consequent to the French Revolution. Into Mr. Fox's opposition to these, it is not our business to inquire; but the allusion to them, except as a modern partizan, in a history of James II., is extraordinary, and at least out of place. Before indulging in the insinuation at all, it would have been the duty of at least a fair reasoner to have pointed out the particular statutes for which the one in question, he says, might serve for a model. But thus it is, though in the sober character of an historian, he seems never for one moment to forget the declaimer of opposition in the House of Commons. Even the obnoxious statute had for some of its clauses, (e.g. those against the title of Monmouth) a precedent in 13th of Eliz. ch. 1., which was actually followed by 6th Ann. ch. 7. sect. 1.

When he comes to Argyle's invasion, his fondness for that unfortunate, generous, and injured, but rash and indiscreet, and may we not add *weak* man, (spite of the historian's admiration of him,) hurries him into numerous misrepresentations. These (the greatest) which regard Sir Patrick Hume, have been so perfectly refuted by Mr. Rose, in his most sensible review of Mr. Fox's history, that I can only refer to it.

What strikes one most, is the force of prejudice on account of Argyle's party and insurrectionary virtue,

which, added to his constancy under suffering, makes the historian bestow upon him the epithet of GREAT.

If rashness in adopting an ill-concerted expedition to invade his country with fire and sword, in revenge for his own personal injuries, and to recover his private fortune,—if the very weakest and most imprudent conduct in pursuing it,—if obstinacy, impatience, improvidence, and vacillation,—can entitle a man to the appellation of Great, he certainly deserves it. His faults, indeed, are much redeemed by his generosity, his openness, and the manly fortitude as well as calmness which he shewed in his last trials; but greatness is the last character which the truth of history would award him. Even Burnet makes but poor account of him, and says, "it appeared that he was not made for these designs."*

We can, however, account for and excuse the highly-charged colouring which Mr. Fox has given to many points in his account of him. He was amiable, honourable, and brave; which is enough to create the interest with which a man who was himself all three regards him; and he suffered in attacking James, which is quite enough to explain Mr. Fox's partiality; but not enough to justify his torturing language, to add one more exaggeration to those already enumerated of the sins of the tyrant.

The warrant for proceeding to extremities against Argyle is surely no more than any King who had defeated an insurrection against himself would have

* Burnet, i. 633.

issued. It directs that *all ways* should be taken to know from him those things which concern our government most, as his assisters with men, arms, money, his associates, correspondents, designs, &c.

This, to a plain man, would surely convey nothing extraordinary, nothing cruel, or even tyrannical. But because torture was allowed, and had been inflicted by the law of Scotland, be sure, in the mind of Mr. Fox, the words "*all ways*" must mean the rack, the thumbekins, and the boots. If such had been the intention, might it not have been left to the administrators of the law; or, if they wanted quickening, would so cruel a tyrant have left it to so vague a hint? Would it not have been expressed without ambiguity? The best answer to the accusation is, that the hint was not taken, and that Argyle was not tortured. But Mr. Fox's prejudices never exhibited themselves so glaringly, and, may we not say, so weakly, as in this account.

Assuming, as usual, conjecture as true, and that torture was clearly ordered, he enters into a grave and solemn question of "the cause of this seeming disregard to (what he chuses to call) the *royal injunctions*."* He assigns many *possible* reasons for it. James *might* be struck with remorse! But then there is no trace of this! How should there, if the torture was never ordered? Then the managers themselves *might* have had sympathy for one of their own order, which they showed not to men of inferior station.

* Fox, 217.

Ingenious, but no proof even attempted; and contradicted withal by the horrible torture inflicted by Whig tyrants upon Montrose in the prolongation of his death.*

In pursuing the history of Argyle to his lamentable end, there seems most extraordinary and unwarrantable reasoning upon an interesting anecdote transcribed from Woodrow.

The Earl had dined and conversed calmly with Mr. Chatteris, and had retired to get some sleep. This was just before his execution. While on his bed, one of the council who had ordered his death desired to speak with him, and disbelieving the attendant, who told him he was asleep, was shown, through a door, "in a sweet and tranquil slumber, the man who (Mr. Fox says,) by the *doom* of him and his fellows, was to die within the space of two short hours."

The counsellor, it is said, struck with the sight, precipitately left the castle, and hid himself in a friend's lodgings, where, flinging himself on the first bed that presented itself, he had every appearance of suffering the most excruciating torture. His friend, thinking him ill, offered him wine, but he refused, saying, "No! no! that will not help me: I have been in at Argyle, and saw him sleeping as

* He was ordered by the then Whig government, and the order was obeyed, to be half hanged repeatedly till life was spent. See Carte, iv. 630, apud Rose.

pleasantly as ever man did, within an hour of eternity. But as for me, ——”

Upon this anecdote Mr. Fox absolutely revels, in the triumph of what we will allow him to call a Whig hero, over what he is most unjust and bigoted in representing as a Tory oppressor. “Who is there,” he says, “that would not *wish* this to be true? What a satisfactory spectacle to a philosophical mind! To see the *oppressor*, in the zenith of his power, envying his *victim*! What an acknowledgment of the superiority of *virtue*! What an affecting and forcible testimony to the value of that peace of mind which innocence alone can confer! *We know not who the man was*; but when we reflect, that the *guilt* which agonized him was *probably* incurred for the sake of some vain title, or at least some increase of wealth which he did not want, and possibly knew not how to enjoy, our disgust is turned into something like compassion for that very foolish class of men whom the world calls wise in their generation.”*

Now, if it be fallacious to take a number of conjectures for granted, without the smallest foundation for them stated, every line of this eloquent burst is nothing but fallacy.

Respect, alone, for Mr. Fox, prevents one from calling it by its right name.

With a want of skill, (if he sought an opportunity to be pathetic,) which is surprising, he tells you that

* Fox, 220.

the very name of this member of the council is unknown. “We know not,” says he, “who this man was; and the truth of it may, therefore, be fairly considered as liable to that degree of doubt with which men of judgment receive every species of traditional history.”* Thus, in the outset, he tells you that not one word he writes is to be taken for granted.

Indeed, if it were otherwise, and the man known, what is imputed to him is obviously an unsupported calumny.

It is a charge branching into a variety of details, without even an attempt at proof.

Yet Mr. Fox, for himself, and, still more, his noble editor for him, claim, nay, make it their pride, that he was anxiously strict in hazarding nothing but what was carefully sifted to the bottom before it was admitted. Here, to be sure, it is not asserted that all the suppositions are proved; but the glowing declamations upon them are good for nothing without that proof. Yet, even *if* proved, why was this counsellor an oppressor? Because, being a judge, he fulfilled a judge’s duty, in awarding the sentence due to treason?

How does it appear that Argyle was *his victim*?

How, that he *envied* him.

Every thing is assumed for the sake of the declamation.

* p. 219. He adds, however, the *belief* of Woodrow, who says he had it from unquestionable authority. Woodrow ought to have told his authority.

It is assumed, that what agonized him was *guilt*. It is assumed, that he incurred that guilt for a vain title, or increase of wealth. It is assumed, that he probably did not want either; it is assumed that he possibly knew not how to enjoy them! Upon the whole, there never was such an instance, in the history of the mind of man, how totally genius and imagination may be bereaved of judgment, and therefore forfeit all pretence to authority, as in this ebullition, which would justify Hamlet's exclamation—

“ He tears his passion all to rags.”

But there is another charge against Mr. Fox.

He says, (again assuming the *motive*, that he may blacken the parties,) “ In order that the *triumph of injustice* might be complete, it was determined that, without any new trial, the Earl should suffer upon the iniquitous sentence of 1682.” *

Here, then, we see that to punish a man as a traitor who is taken in arms against his country, is, in the mind of Mr. Fox, *injustice, per se*; for it is here only aggravated by referring to the sentence of 1682.

That reference, in Mr. Fox's mind, made it more complete, but the fact was already injustice.

Will Mr. Fox's private opinion on the right of insurrection deliver him from this?

If Argyle was right, because he thought the country oppressed, every man who rebels is right, for no doubt he thinks so too. And then in Mr. Fox's opinion it is unjust to punish treason. Burnet, how-

* Fox, 218.

ever, who recounts the reasons for his invasion, given by Argyle himself in his last moments, makes no mention of the wrongs of the country, nor of any wrongs but *his own*.

“ He *justified*,” says he, “ all he had done.” How? By any tyranny of James after he was King? No! Because “ he had been unjustly attainted by *Charles*, which had dissolved his allegiance; so it was justice to himself and to his family to endeavour to recover what was so wrongfully taken from him. He also thought that no allegiance was due to the King till he had taken the oath, which the law prescribed at the coronation.”* So, then, Mr. Fox's patriot hero rested his cause on his own personal wrongs; and is withal a madman, who tells you, that until the King is crowned and takes the oaths every government is dissolved, and every subject who has any thing to complain of may take arms against his country!

Was Argyle right, then, in Mr. Fox's mind, in denying James's title to the throne, which he derived from his ancestors, and on which he was seated but a few months before with the fullest approbation of all the organs of the people?

What but madness, or rebellion for rebellion's sake, could make this sanguine indiscreet man declare war upon “ James Duke of York and Albany,” as if he was not King of Scotland?

What refinement of metaphysics, what scheme of

* Burnet, i. 632.

the rights of man, could justify, or even explain this to common sense? How then will Mr. Fox justify his assertion, in calling the resistance to Argyle unjust? For if his punishment was unjust, his enterprise was just; and it would have been unjust to oppose him.

Of all the futile, as well as dangerous opinions which Mr. Fox exhibited in the course of his life upon popular questions, this upon Argyle's expedition seems to be the most dangerous, most futile, and most indefensible.

But, farther, Mr. Fox seems ignorant of what he must have known, that a man lying already under sentence for one treason, cannot be tried and sentenced again for another.

Argyle had already been condemned, and, I will allow with Mr. Fox, most iniquitously condemned; but being condemned, no *new* injustice was committed in not executing him on another sentence, which, had he been tried, he legally deserved. Would it have softened his death to have granted him a pardon for the first crime, in order the next moment to behead him for the second? It was the case of Sir Walter Raleigh over again, which, though it might be execrable and hard, was neither the one nor the other in point of form. He had before been condemned for treason, and though the sentence was not executed, liable to be so at any moment.

The hardship was in being allowed to remain fourteen years with the axe suspended over his head, after which the sentence seemed virtually remitted,

by his being released from prison and entrusted with a command.

Notwithstanding this he was kept liable in law to the execution which finally was inflicted.

In this situation he had committed new crimes, and might have been tried and condemned for piracy*, but the law interposed, and claimed him as a man already doomed, and not therefore triable. Do I defend the driveller who kept the law so long in force against him? God forbid!

But not the less would it be unjust to say, that if punishment for his second offence was deserved, the fulfilment of the forms prescribed by the law was the "*triumph of injustice*."

Mr. Fox winds up the account of the last moments of Argyle with a prayer, in the very spirit of a disciple of insurrection against a lawful King, which James, who had then committed no great act of tyranny, certainly was.†

* The name of Raleigh is so splendid, that the mind is unwilling to contemplate the dark spots in his character. Many there were, which it is not necessary here to dwell upon. But with regard to the case which enforced the former sentence upon him, after reading Hume's most able analysis of it, there can be no doubt of his guilt.

† He had for a few months after his accession, till parliament met, levied the excise and customs of his own authority, and that in a most ungracious and arbitrary manner. But they were all regularly given to him about the very time of Argyle and Monmouth's invasion. Neither of them mentioned, possibly did not know, any thing of this act of tyranny. But if they had, would it have justified insurrection? Then general warrants would have done so in the time of George III.

"Such," says our historian, "were the last hours, and such the final close of this GREAT man's life. May the like happy serenity in such dreadful circumstances, and a death equally GLORIOUS, be the lot of all *whom tyranny, of whatever denomination or description, shall in any age or in any country call to expiate their virtues on the scaffold.*"*

Thus, it is tyranny, in Mr. Fox's opinion, to try and execute a rebel taken in arms against his lawful sovereign. How will he defend the many executions in the reigns of William and the House of Brunswick?

But even with red-hot fervour, such as was in the mind of a Sidney, a Ludlow, a Madame Roland, or a Mrs. Macauley, with all the partial zeal shown by Mr. Fox himself against the Stuarts, it is not possible to warp a mind of the commonest judgment into the opinion that Argyle's expedition was justifiable by any law, even of nature or self-defence, setting the law of the land wholly out of the question.

For it cannot be too often impressed, that at the time of the invasion James had done nothing to excite revolt in the least loyal of his subjects.

Even Wildman, that rough commonwealthsman, praised for being one of the very few who objected to the Prince of Orange's declaration, as not containing the true grounds of the invasion; even *he*, in a declaration framed by himself to correct

* Fox, p. 222.

the other, did not count much upon the acts of tyranny in James. He even allowed the dispensing power, and fairly avowed, that though it had of late been stretched too far, the stretching of a power that was in the Crown was not a just ground for war. He added, that the King had a right to bring any man to trial; that the Bishops had had one, and were acquitted and discharged; in all which there was nothing contrary to law.*

James, then, according to his greatest enemy, even at the time of the Dutch invasion, much more, therefore, at that of Argyle, was a King, and no tyrant; and unless to be a King, in Mr. Fox's mind, is to commit sin, and therefore be liable to be cut off by the sword of a subject, Argyle, with all his *virtues*, was a traitor. Nor had his treason the excuse which alone could ennoble it,—resistance to a tyrant for breaches of the law.

From his own dying declaration, he only sought redress for his own private injuries; and for this he was ready to deluge his country in blood.

If his death, therefore, was *glorious*, in Mr. Fox's eyes, there is no rebellion which in his opinion may not be glorious, defended, practised, praised, and ap-

* Burnet, i. 780. Wildman's view was upon a far more extensive principle than that of mere self-defence.

He seems to have been actuated by Mackintosh's doctrine of a REFORMATORY REVOLT.

The Whig Bishop himself is forced to say of this period, that, "the King had not yet done that which would justify extreme counsels." i. 629.

proved; for no rebel but could find reasons equal to those, whatever they were, for supposing James II. was only Duke of York, and not King of Britain.

Upon the whole question of Argyle, if it was Mr. Fox's object to interest us for him under his hard fate, he has succeeded; but he would have interested us more if he had attempted less.

By endeavouring to prove too much, he has weakened our sympathy for Argyle as a patriot, and our admiration of him as a hero; and, what is more, has weakened his own authority as an historian, an observer of men, and a guide in constitutional law.

MONMOUTH'S REBELLION.

In narrating the progress of Monmouth's rebellion, our illustrious champion for the cause of insurrection, has not the same scope for enthusiastic declamation as in the case of Argyle. For Monmouth, the weakest of men, though personally brave, and equally amiable, had not the same injuries to complain of as the chief of the Campbells, nor were the circumstances of his death attended with so much interest. He seems to have been the tool of the Whigs, who must have thought him a convenient instrument for their purposes, when, to try what a beautiful person could do for them in exciting the people against his father's government, they sent him to make a progress in the western midland counties, under what pretence, except as an experiment of his title against

that of the true heir, James, it would perplex the wisest of the historians to determine.

Yet if this were so, there was not a Whig among them that did not wilfully deceive his own heart, for not one of them ever presumed to assert, in public at least, that Monmouth was the true heir to the Crown.

The progress, therefore, of the Whig Duke, was either a piece of unmeaning vanity, or the effect of a deep-laid conspiracy by the Whigs to effect that by falsehood (in the same manner as they did in regard to the real Prince of Wales at the Revolution,) which they could not procure by fair exertion, the exclusion of the Duke of York.

This having failed, and Monmouth in exile, after the miserable exhibition he made of his feebleness in the Rye House plot,—now confessing, now retracting, now asking pardon, now bullying, it was yet thought best by the malcontents to retain their hold over him, and, though they were not generous enough to join fortunes, to maintain correspondence with him and elevate his hopes, on the chance of their being realised upon some future occasion.

The poor Duke was therefore cajoled into an enterprize, for which he was not only totally unfit, but which he himself disapproved, and for which there was not the slightest pretence. We may say, indeed, of him, as Falstaff said of Worcester,

“ Rebellion lay in his way, and he found it.”

It is neither necessary, nor is it my intention, to revert to the details of a career so well known, except to attend upon Mr. Fox in his few observations upon it; remarking only, in the outset, that it is difficult for any sober person, not absolutely in love with the doctrine of a REFORMATORY REVOLT, to fabricate arguments, any thing like satisfactory, on the ground of injured rights, which could justify this unfortunate man in an invasion of James. Even if he had been at the head of a powerful army, and invited by powerful demagogues in England, much more with the contracted means he possessed, and the total want of preconcerted plan, or reasonable expectation of an effective support after he should land, the question in limine occurs, on what pretence was this enterprize undertaken? If only with a view to destroy tyranny, in what had James then shown himself a tyrant? In what had he oppressed? In what was his title defective?

Unless Monmouth had set up his own title against his, which, in his secret heart, he believed was just, for so he declared it;—unless he absolutely aspired to the crown, as he afterwards did, spite of previous disavowals,—it is absolutely embarrassing to ingenuity itself, much more to common sense, to find the remotest plea to justify the undertaking. It is certain Mr. Fox is not able to furnish any such plea.

This is important to consider, because Mr. Fox seems not to conceal that he approves the expedition.

In speaking of Sir Patrick Hume, one of the most active advisers of Monmouth to the measure, he says, he was “looked upon as a principal ally by such of the English *patriots* as had at any time entertained thoughts, whether more or less ripened, of *delivering* their country.” *

Delivering from what? The having levied the customs of his own authority till parliament met and gave them to James,—the chief or only stretch of power he had shown.

But will even that justify an invasion by his own subjects?

Yes! says Mr. Fox, for, speaking of Burnet’s disapprobation of Monmouth’s views, he observes, “It is difficult to accede to his opinion, that, though particular injustices had been committed, the misgovernment had not been of such a nature as to justify resistance by arms.” † According to Mr. Fox, therefore, James ought to have been dethroned, or at least have been exposed to an invasion, for doing a thing, afterwards allowed, in a wrong manner; and those many acts for which a minister so frequently and so easily obtains an act of indemnity, justify immediate insurrection. Yet he allows, that, to justify resistance, the cause of the insurgent must be “*intrinsically* just.” Such, then, must have been the cause of Monmouth, in the opinion of one who is held, by a large and respectable party in the nation, to have been one of her

* p. 173.

† p. 184.

most enlightened statesmen. And yet he blames, in the terms which such wicked folly deserves, the manifesto issued by the Duke on his landing, accusing James of burning the city, murdering Godfrey and Essex, and poisoning his brother, as well as asserting his own right to the crown. He, (Mr. Fox,) therefore, would have made a better manifesto; and to have seen how he would have penned it would have edified us in the science of democratic policy.

Would it have begun thus? "Whereas myself, and Sir Patrick Hume, and Sir John Cochran, and Fergusson, had all endeavoured to rise against King Charles, but failed; for which, in fear of the unjust laws that punish treason, we have become exiles in the time of King James; therefore King James ought to be dethroned."

Or would it have been, "That whereas there is no law preventing a Papist from being King of England; and King James is a Papist, therefore he ought to be dethroned?" Or perhaps, or best of all, "Whereas the Kings of England take certain oaths at their coronation, and therefore, before they take those oaths, they are not Kings of England, and the subjects owe them no allegiance: and whereas King James was some months before he was crowned and took the said oaths: therefore, although he has now taken them, he ought to be dethroned?"

This was very little different from the declarations Argyle, and others of the invaders; but would

this, we may ask, have satisfied those Whigs who did not join Monmouth, better than the proclamation he actually published?

For this backwardness in the Whigs seems to surprise Mr. Fox; and he endeavours to account for it, by saying, "Their present coldness *might* be imputed to the indistinctness of his (Monmouth's) declarations with respect to what was intended to be the future government." *

Thus, then, that James's government ought to have been overturned, though he had been only a few months on the throne, and his first parliament only commencing their duties, seems, in Mr. Fox's mind, to have been no more than an acknowledged principle of the Whigs, and of course his own, provided only that they had known what was intended as to the future government.

With great submission to Mr. Fox, he might, without much offending the patriotism of the Whigs, or the justice of the case, have given a better reason for their neutrality, in their loyalty and good sense;—loyalty to a lawful sovereign, who was *as yet* not a tyrant;—good sense, which saw through the total want of justice in the invasion, and the imbecile character of its leader.

Imbecile as he was, and imprudent in claiming the crown, that claim was at least a more intelligible reason for the invasion than any that had been urged

* p. 245.

by Argyle. When he himself, indeed, in Holland, expressed to those who persuaded him to the expedition his doubts of success from the paucity of his numbers, he was reminded, in answer, of the few followers by whom Henry IV. was attended when he landed, and yet his success was complete.

Mr. Fox, however, preferred the *Whig* reasons, which actuated, he says, a part of those who joined him, who considered the destruction of *James's* tyranny as the object *which, at all hazards and without regard to consequences*, they were bound to pursue.

This phantom of tyranny glares perpetually upon Mr. Fox, whether in existence or not. For James, as we have observed, had then reigned but a few months; he was only just crowned, and he was then busy with his parliament: and yet one would imagine, from this raised mode of expression, that he had cut off thousands of heads, and levied millions of money, by his sole will and arbitrary power.

I own, in this common place invective, though I see abundant proof of the partizan, I look in vain for the statesman, or that searching mind and overwhelming power of argument which all justly allow to Mr. Fox.

As it was no part of the plan of these strictures to pursue the details of Mr. Fox's historical work as facts, but only such observations as he makes upon them, which appear unwarrantable, from the strong bias of his mind; and as he closes with the death of Monmouth, which now fast approaches, little remains

to be added but a few notices of sentiments and expressions of the same nature as those we have already enumerated.

His excuses for Monmouth's errors, weaknesses, and instances of pusillanimity, are very poor; nor was he bound to make them as an historian; but, being a Whig, the history is made secondary, and to defend the character of Monmouth as a *deliverer*, is made the chief object of the disquisition, while his injustice as an invader is not remembered. In a sort of exculpatory tone, therefore, as if it was almost merit, he says he was a man against whom all that has been said by his most inveterate enemies, both to him and his party, amounts to little more than this,—that he had not a mind equal to the situation in which his ambition placed him. Burnet says he was gentle, brave, and sincere, to which we add generosity; “and surely those qualities go a great way in making up the catalogue of *all* that is amiable and *estimable* in human nature.”*

Allowing the amiable, with submission, this by no means goes a great way to *all* that is estimable. Fortitude, resolution, decision, resource, and, above all, truth; independence of the flattery or cajollery of others; in short to be *justus et tenax propositi*;—in all these he was lamentably deficient. His submission to the counsels of others, even after they had proved themselves unworthy, had the weakness of a child, particularly in the case of the infamous

* p. 287.

Lord Grey; upon which, and this whole part of his character, the language of Mr. Fox, from viewing him, no doubt, chiefly as an unfortunate Whig, is remarkable.

"One of the most conspicuous features of his character," says he, "seems to have been a remarkable, and, as *some think*, a *culpable* degree of flexibility."

As *some think*! Does Mr. Fox, then, *doubt* that this flexibility, which drove him into such a rash and unlawful undertaking, which caused his own ruin, and shed the blood of thousands, is culpable to the highest degree? Or do Whiggery and the insurrectionary spirit salve this?

He goes on still more extraordinarily with the apology; and, with a zeal which does not, however, conceal the fallacy, observes,—what bears nothing upon the question,—"that such a disposition is preferable to the opposite extreme will be admitted by all who think that modesty, *even in excess*, is more nearly allied to *wisdom*, than conceit and self-sufficiency." Well! It needed not the authority of Mr. Fox to make this discovery. But how does it defend Monmouth? Was it excess of modesty that made him create himself King, and by so doing break all his promises to his best friends? Was it excess of modesty to accuse James of what he knew to be false? There is even ridicule attending the application of this sentiment by Mr. Fox.

But this modesty is allied to wisdom. Was it wisdom, then, that made him undertake an enterprise, having

for its object nothing less than the revolt of nations, and the dethronement of kings, and yet to act like a baby in leading-strings; swayed from his purpose at every turn, and obeying the suggestions of every fool, every knave, and every coward?

Mr. Fox says, that "a willingness to be convinced, or, in some cases, even *without* conviction, to concede our own opinion to that of other men, is among the *principal* ingredients in the composition of practical wisdom;"* and for the illustrations of this sentiment, he instances the *sagacity* of Shaftsbury, the honour of Russell, and the genius of Sidney. Against the *honour* of Russell not a word can be said. But as for the sagacity of Shaftsbury, what did it do but murder Russell and destroy himself? The greatest rogue of his time, he would have made Monmouth, first a robber†, next an incendiary; as Sidney would have made him a republican. Poor Monmouth would have been well off by conceding his own opinion, *against his conviction*, to such illustrious guides. This whole passage astonishes, from such an able head as Mr. Fox, particularly in his admiration of the *sagacity* of this violent rebel. Burnet, at least, had a different opinion, and knew men. He says Monmouth gave himself *fatally up* to Shaftsbury's conduct.

But let the abstract principle laid down be true;

* p. 287.

† He went headlong with the iniquitous Cabal, and, if not the author, concurred in the scheme of shutting up the Exchequer. As it was, Burnet says Monmouth gave himself fatally up to him.

then it was wise in Monmouth to be governed by such a knave as Fergusson. It was wise, being a man naturally of truth, honour, and sincerity, to adopt and publish the most atrocious accusations against James, which, Mr. Fox himself says, he *knew* to be false. It was wise, having had the strongest proofs of Grey's cowardice and incapacity as a soldier, (himself the bravest of soldiers,) to continue him in the most important and trustworthy command he had to give! Does Mr. Fox cure this absurdity, this weakness, by saying that he "had suffered flexibility, so *laudable in many cases*, to degenerate into a *habit*, which made him often follow the advice or yield to the entreaties of persons whose characters by no means entitled them to such deference." As well might he apologise for drunkenness, because an original love of liquor had been suffered to degenerate into a habit! He adds, too, (*mirabile dictu!*) that the partiality of friendship, and the conviction of his firm attachment, might be some excuse for his listening so much to Grey; a man whom, be it observed, Mr. Fox had before represented as deeply stained, and known to be so, with private vices.

All this laboured apology, drawn from abstract truisms, may explain, but never can defend, the conduct of the poor weak nobleman, which caused so much woe, both to himself, and the many victims of his criminal ambition, disguised not even in the shape of specious patriotism. To elevate him into the character of a hero, instead of being a tool, baf-

fles the genius, and, what is more, even the party spirit of Mr. Fox, who has toiled to procure for him the approbation of his readers, and toiled in vain.

And yet, if the death of Argyle was *glorious*, because he perished, as is said, in the cause of liberty, on the scaffold, I see not that the death of Monmouth was not equally so. For both equally perished on the scaffold, and both in the same cause,—whether of liberty or not, is another question.

No one, indeed, can charge Argyle with the *practical wisdom* of conceding his opinions to others, for his obstinacy and jealousy are imputed to him as mainly contributing to his destruction. But, in other respects, may not the Duke's case vie with his, and equally challenge the praises of posterity, at least in the opinion of Mr. Fox?

Both affirmed themselves to be *intended deliverers* of their country; from what acts of tyranny by James, both failed to point out; both denied James's title to the crown, declaring they made war on the Duke of York, who was therefore a usurper; both had private injuries and objects which had nothing to do with the country,—the one wanted his estate, the other the crown. Again, both were equally and absurdly remiss in preparing for so vast an undertaking with such inefficient means. Both trusted to chance, and both found the chances against them. Finally, both failed, as might be expected, and both lost their heads without the intervention of a jury,—the one by a former sentence, the other by an act of attainder.

If this be not a comparison quite worthy of Plutarch, it is at least made up of home truths; and though Argyle showed much of real heroism in his prison, redeeming many of the faults he showed in the field; and Monmouth, whether in field or prison, was no hero at all; yet still, in the visions of party enthusiasts, they were equally esteemed the victims of oppression, and therefore equally entitled to places in Mr. Fox's temple of fame.

Mr. Fox, in his attempt (with what success we have seen) to canonize the Duke, will not allow of any *advocatus diaboli*, and therefore is angry with Echard, and sneers at Burnet, for some of their expressions concerning him in his last hours; and the divines who attended him have at least their full share of that sneer.

Monmouth's well-known letter to James implores mercy in terms any thing but worthy a great and patriotic champion of an injured people. He looks upon his attempt with horror, and abhors those who put him upon it. In short, spite of Fox's excuses, he is any thing but a Sidney, or a Brutus. This letter, Archdeacon Echard calls, and, as I think, truly, after such outrageous accusations, pusillanimously submissive; which Mr. Fox says, was, perhaps, not so *seemly* in a *churchman*.

Why a churchman may not judge of pusillanimity as well as another, I know not, nor can I conjecture a reason for the insinuation against Echard, unless the hope expressed by Monmouth, in addition to

meaner topics, that God would strike the King with compassion, makes it unseemly in a churchman to meddle with any part of such a composition.

In regard to other incidents, more interesting as concerning domestic morals, there is the same indefensible partiality to remark upon. Monmouth's notorious and open adulterous connection with Lady Harriet Wentworth, who might certainly have loved him with the tenderness of a wife, but who as certainly was nothing but a mistress, is at least spoken of without blame. The sophistries, indeed, with which they disguised their offence against the moral decencies of life are not even observed upon; and yet when the injured real wife is introduced on the scene, she is dismissed with a harsh, and underserved sarcasm.

Noticing the account of her visit to her husband in prison given by Burnet, that they met, and parted very coldly, Fox says, "it is a circumstance, which, if true, gives us no very favourable idea of the lady's character." Good God! Why? Is no allowance to be made for a woman of a character never reproached; a real wife, who had endowed him with princely riches, but whom he had early wronged, cast off, and, as far as possible, disavowed, while he *pocketed her fortune*, under pretence that he had been too young to have had a free choice, and therefore transferred that choice to another woman, and openly maintained it to her face! One would have thought that the known good nature of Mr. Fox alone would have spared this remark.

But to such lengths will indifference, or hostility to legitimacy, carry us.

Again, and to have done: in speaking of Tennison's visit to the Duke, and Burnet's account of the manner in which he expostulated with him upon his crime, he says, "that that divine did (not his duty, but) what the right reverend historian *conceives* to have been such, in a less peremptory manner than the others." If this mean any thing, it means that a clergyman, sent for expressly by the condemned himself to prepare him for death, ought not to have thought it his duty (his crime being treason) to set the heinousness of it before him.

In the same spirit he makes it matter of grave surprise, and therefore of blame, against the other divines who attended him, for being so intent upon doctrine that they did not exhort him to retract the calumnies of his manifesto.

The answer is clear: as no man believed the calumnies, it was not necessary; but it concerned James, and the community too, that doctrines so subversive of public security as those declared by the invaders, should be publicly disavowed. The thing is not of much consequence, and it is only noticed in order to show how entirely, from first to last throughout his performance, Mr. Fox has sacrificed to party feelings.

His words and sentiments in this parting observation (for here the history closes) are quite as remarkable as anywhere else.

"They were so intent," he says, "upon points more immediately connected with *orthodoxy of faith*, that they omitted pressing their penitent to the *only* declaration by which he could make any satisfactory atonement to those whom he had injured."* Now I do not defend the pertinacity of the divines, which was unfeeling and almost cruel. But the orthodoxy of faith, that is, of *religious* faith, was scarcely in question. It was the political creed of resistance to the government which was the chief object of those upon whose attempts Mr. Fox has made this remark.

And thus, the closing remark in this eventful history amounts to this,—that when a traitor invades his country on false, because unfounded pretences, and avows penitence, personal slanders (not credited and not credible,) are the *only* things for which he is to express his sorrow, and not the right claimed, to arm against his lawful sovereign, whose title he had disputed.

Upon the whole, with every possible deference for this great intellect, and every possible respect for his sincerity in his principles, as well as admiration of the beautiful parts of his character, are we far wrong in thinking that the political principles laid down, the sentiments hazarded, and the criticisms indulged, both upon events and characters, in his history, are not such as establish Mr. Fox's claims to impartiality as an historian, any more than they will add to his reputation as a practical statesman, a philosophic observer, or a constitutional lawyer?

* p. 290.

No. V.

THE OPINIONS OF LOCKE.

THE intellect of this great man was so profound, his reputation as a reasoner so deserved, as well as so widely extended, and the knowledge which he brought to any subject so exact, that even if he were not, as he is, the head and father of those doctrines which we are examining, it would be a sort of cowardice, as well as an unpardonable disrespect, if we did not notice them. Certainly, if the arguments against the tenets we oppose are, as they ought to be, sound, it is not a name, however high, that will upset them; truth must prevail, even against authority; and if our notions are true, he who has not been afraid of venturing to question Fox or Mackintosh, ought not to flinch in examining Locke.

This venerable name fills every one who has heard it with respect and deference; for ability and integrity, however, more, perhaps, than impartiality. The friend, confidant, and admirer of such a rash incendiary, as well as volatile genius, as Shaftsbury;—himself, too, an object and instance in his own person of, possibly, the most shameful and arbitrary persecution, though not the most important, that disgraced the reign of James;—could not, perhaps, have approached the subject of resistance to tyranny altogether without strong preconceived notions, not favourable to dispassionate or calm inquiry. He

had not, indeed, like Fox or Mackintosh, been so accustomed to the Pythian violence, which always and necessarily belongs to public declaimers on popular subjects; but it is not unfair to suppose that the honest opinions of his mind borrowed both fancy and vehemence from zeal, kindled by personal feelings, in addition to all that was excited by the spirit of the times. Accordingly, though we must allow for, we must not shut our eyes to those extreme and Utopian notions of the power and exactly defined rights of the people, and the subserviency of sovereigns, which belong to the celebrated Essay on Civil Government.

With his preliminary essay, demolishing the rope of sand, as he justly calls it, with which Sir Robert Filmer endeavoured to bind up the system of the divineright of kings, and the derivation of monarchical power from Adam, we can have no quarrel. On the contrary, as that system has long been considered, and deservedly, (to use a phrase of Swift's when he triumphed,) down among the dead men, so inconceivably prevalent was that doctrine in those days, that the world were obliged to the great abilities of Locke for stooping to refute it.

But the second essay, upon the general nature of government, and the many startling consequences which Locke derives from his premises, as well as the premises themselves, are a very different matter. I am not going to review or analyze this treatise at large, but will merely examine a few of its leading

principles, and the results which he makes to flow from them practically considered.

Eminently, in the first place, must we notice his theory of the state of nature, as it is called, or a state, as is supposed, where each individual man, lord of himself, lives, acts, and resolves in a manner wholly free from all social law or the restraints of civil polity. The *natural* liberty of man, he says, is to be free from any superior power upon earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule.*

By his favour, I should say this was the character of a wild beast, certainly of a mere wild man, who never knew the relations of kindred, or that there were other men in the world, rather than of a being, though living only in his nature, made for marriage, and to create a family.

This state, however, is said to be that of perfect freedom,—to order our actions, and dispose of our *persons* and *possessions*, as we think fit, within the bounds of the *law of nature*, without asking leave, or depending upon the will of any other man.†

Upon this our first remark is, that the whole supposition is assumed. In the body of this work we have already asked, was there ever such a state?

* On Government, 189. Lond. Edit. 1821. And again, 269. "Men being by nature all free and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent."

† On Government, 189.

Could there ever have been such a state? Unless the world had been peopled by dragons' teeth, like Jason's field, every one of which produced a full-grown armed man at once, we say it could not be. Those who believe the Bible account, or who, without that account, think (as is likely from the history of nations) that mankind sprang from a single pair, say it never was.

It is quite evident, that if Adam was the *only* as well as the first full-grown man in the beginning of time, and if Eve brought forth mere infants, as at present, and not adults, that there could not, for many years at least, have been such a state. The children, as Locke himself allows, must have obeyed their parents; and thus the family, from the beginning, would have been always in a social state, of which the father would have been absolute master, without a thought of natural rights, whether of liberty or resistance, on the part of its members. And though in process of time the children grew up, and branched off, becoming themselves fathers of other children, which would form other families, independent, possibly, but not necessarily so, of one another; yet each of these families, granting them the utmost latitude of independence, would form so many civil societies or polities, in the same manner as there are now in the world a number of small distinct states, which acknowledge no chief but their own; but the individuals of which are by no means masters

of their actions, persons, or possessions, to dispose of them as they please, without the restraints of law.

Nor is there any reason to suppose,—no proof of it at least is offered, (on the contrary, the probability lies the other way,) that each of the sons of Adam, and each of their sons, ad infinitum, would thus branch off regularly as they came to manhood, so as to form that tribe of solitary individuals which this far-fetched hypothesis supposes; which, if it is not so, this darling notion of our popular theorists, of an actual polling of every man's consent to choose this or that system of government, must be given up. And though, undoubtedly, as the world came to be peopled, there must have been, and were, instances of an *election*, by independent families, of chiefs or governors (usually military ones), and sometimes lawgivers; yet, for a long time before those elections were made, it is presumable that mankind remained under the paternal or patriarchal government; and, consequently, the scheme of *universal* freedom from every law but a man's own, is an imaginary state which never existed.

Against this presumption, Locke asks, with something like triumph, whether all independent princes are not at this moment in a state of nature one to another? "Hence," he says, "it is plain the world never was, nor ever will be, without numbers of men in that state."*

* p. 198.

With submission, this is no answer; for the question is not, whether *some* men may not have been, or are not even now, in a state of even the wildest independence? but whether *all* were so before the institution of governments? According to us, from the moment the first man and woman agreed to live together, government began, and continued ever since, wherever there were men and families: and though the heads of families might be, and often were, independent of one another, yet as these, from the premises, never coalesced in a community, the precedent of consent to constitute a sovereign never could be tried, for such sovereign, as to them, never existed.

Yet, even these heads of families, whom we may call sovereigns, were not such despotic masters of themselves, or so independent of one another, as Locke supposes; for they were all governed by a law of nations, such as it was, but to which they never consented in form; and this law, in many instances, according to the Scriptures, was the revealed law of God.

With these Scriptures, Locke himself deals plentifully to prove *instances* of the consent he advocates. He is driven for it also to the Brazils, and other Indian nations; and he quotes the colony led away from Sparta by Palantus, recorded in Justin, to show that there have been early *examples* of such consent. Does any body doubt that there are such examples? The fact is not denied. The only wonder is, as it is to prove a

universal law, (which the law of nature must be,) that the examples are not greatly more in number; nay, that they are not exhibited by every early government under the sun. But could they be multiplied tenfold, very far would they be from amounting to what this fanciful theory requires; namely, that by the *law of nature*, (which must be gathered from un-deviating and innumerable facts,) consent *in form* by *all* the individuals of a commonwealth, is or was ever necessary to establish a *lawful* government, so that no government is lawful without it.* In his very first page he says, that William's title is the consent of the people, "*which being the only one of all lawful governments*, he has more fully and clearly than any prince in Christendom."

Thus, the succession of our princes from King Egbert, which had continued near 800 years; of the houses of Oldenburg in Denmark, and of Capet in France, which had existed for nearly as many; and even of the Emperors, who were always by election, (though of sovereigns like themselves, and therefore, of course, NOT PURE,) — these were all unlawful governors, and usurpers upon the people's rights.

Certainly, where such formal consent has been given, the government is manifestly lawful; but it by no means follows, that where no such consent can be traced, it is therefore the reverse; and that the people may take arms (which is what Locke means, or he means nothing,) to force their rulers into such

* Locke, *passim*.

measures as all may approve. The various modes of testifying consent are wholly conventional, and, in every nation, depend upon their own peculiar laws and customs. Long usage and peaceable acquiescence are indications surely as valid as an express polling of votes. This is all the foundation we have for our own common law, by which our most sacred and important civil institutions, and all our rights of property, are pointed out and secured. Are all these unlawful because we cannot trace the consent given to them by our ancestors by any formal act of recognition? Upon what other foot stood our Constitution itself, of King, Lords, and Commons? Where are we to find, where even to look for, the record of positive formal consent by the nation to be ruled by a king, with the advice and participation in power of a national council, call it Parliament, Witenagemot, or by whatever you please? If this cannot be shown, according to Locke, all crowned heads from Carac-tacus (and probably long before him) were usurpers. Alfred himself, and even Egbert, cannot escape, for there is no account of the *election* of either of them. Do we not therefore, of necessity, recur to the proposition of Blackstone, quoted in the body of this work,—Egbert's title cannot be demonstrated beyond a possession of 300 years; and we take it for granted that it was originally a good one on that account, *for we know no better*.

Now, were these tenets of Mr. Locke to hold for a moment, and all rights be exploded that could not

be derived from the positive consent of parties, what would become of the security of the world? We see how anxiously sensible of the dangers of such a doctrine are all our lawgivers, from their attention to what are called statutes of limitation. Were acquiescence never allowed to be available in proof of a right to property, what property could ever be safe? The perpetual changes in titles, and the overthrow of estates, would be so galling to all happiness or independence, that one of the objects (the greatest) of civil society, security, would fail. Hence it has been wisely ordered, that a given number of years of undisturbed possession shall bar all claims, however originally just. So favourably, and so properly disposed is the legislature to ground consent upon *acquiescence*; so much better is it for the peace of mankind, and therefore for the ends of justice itself, to submit to what may have been anciently and originally wrong, than, by perpetual commotion, and never-ending strifes, to render security a mockery, and law a mere ceremony.

It may be asked, if this hold good in public questions of the title to thrones, or particular forms of government, what period of time is to close upon claims, so as to make the acquiescence contended for amount to consent?

With that, if it even were not difficult to solve, we have nothing here to do. Our business is with the doctrine of Locke, who demands a positive formal proof of consent by a people to give the title of *law-*

ful to its government, whether the time of the acquiescence be long or short. Nay, not content with an ancient compact, however distinct, on the part of the people who are gone, he demands its perpetual renewal by those who are to come. For he lays it down broadly, clearly, and without modification, that consent itself can only bind those who give it, not those who are their successors; that a father, therefore, cannot bind a son, who is free to vacate for himself all that his father had done before him. Hence, he denies all allegiance from the circumstance of our birth-place; distinctly asserting, that it is not "any more hindrance to the freedom of mankind, that they are born under constituted and ancient polities, that have established laws and set forms of government, than if they were born in the woods, among the unconfined inhabitants that run loose in them. For those," he proceeds to say, "who would persuade us, that by being born under any government we are naturally subjects to it, and have no more title or pretence to the freedom of the state of nature, have *no other reason* (bating that of paternal power, which we have already answered,) to produce for it, but only because our fathers or progenitors *passed away their natural* liberty, and thereby bound up themselves and their posterity to a perpetual subjection to the government which they themselves submitted to." * This extraordinary independence of the laws of a country where we reside is carried to a strange

* p. 288.

height in another exemplification of the law of nature, which if correct, all jurists, and, indeed, all men, have been buried in wonderful error.

For having laid down that *every* man has a right to punish offenders against the laws of nature, and be their executioner (which may be abstractedly true), he asks, how else can any prince or state punish an alien for *any crime he commits in their country*? His language is remarkable. He says, their laws "reach not a stranger. They speak not to him; nor, if they did, is he bound to hearken to them. Those who make laws in England, France, or Holland, are to an Indian but like the rest of the world, — are men without authority; and therefore, if, by the law of nature, *every* man hath not a power to punish offences against it, I see not how the magistrates of any community can punish an alien of another country."*

So then, according to this, an Indian coming here under the protection of our municipal laws, may offend every one of them with impunity! Was this great light to be told, that every man who comes into a country, though only a sojourner, is for the time bound by its laws? What are we to say to this, but that aliquando bonus dormitat; the rather, because, with strange inattention to his own positions, he, in another place, arguing for a *tacit* consent to the laws of a country, holds, that a man lodging in it for a week, or barely travelling on the highway, is as

* p. 194.

much obliged to obey the laws of its government as any one that lives under it.*

Locke proceeds to say, that a man cannot, by any compact whatsoever, bind his children or posterity; for a son, when a man, is altogether as free as his father, who can no more give away the liberty of his son than that of any other man.

Granting that this may be true, if by liberty we mean the opposite of slavery, (though there are not wanting advocates for the paternal power in this respect,) it is obvious that the liberty here mentioned as *given away* by the father is not what is meant by such mere freedom from slavery, but the power of throwing off allegiance to the government under which we live.

"Thus," says our author, "it is plain by the *practice of governments* themselves, as well as by the *law of right reason*, that a child is born a subject of no country or government. He is under his father's authority till he comes to the age of discretion, and then he is a free man, at liberty under what government he will put himself."†

Where Mr. Locke found this dictum in the practice of governments, with the law of England staring him in the face, which enacts the direct reverse, it would be vain to inquire; equally vain, I think, to discover it as a *law of right reason*. It is, indeed, carrying the rights of nature to extremity with a vengeance; and the consequence would be, that no

* p. 291.

† p. 290.

country would ever be able to know its own citizens, no government its subjects, unless every individual man and woman who enjoys the protection of the laws should (as the men formerly did) take the oaths of allegiance to the sovereign of the state. But without that precaution, Locke thinks that the all-powerful and inalienable rights of nature would prevail against all old-fashioned and unjust notions of allegiance being founded upon birth, if the liegeman should change his mind, which *upon certain conditions* he holds he may do, and might withdraw his fealty whenever he pleased.

This argument, we are to observe, is adopted in answer to an objection, which, he says, is made to his theory of the necessity of consent in the people to render a government what he calls lawful; the objection being, that the people in any commonwealth having always been in subjection, either to their fathers or their sovereigns, never had this freedom. Hence his *necessary* proposition, that even when united together under a government, they were still always free to continue so or not.

But, as if sensible of the inconvenience of this impracticable theory, our philosopher has a salvo which is to bring every thing round again.

This is, that though the father cannot bind the son, yet he may annex such conditions to the enjoyment of the *estate* he may leave him as will bind him to consent, by swearing allegiance to the government that is to protect him in it. As long, there-

fore, as he enjoys the property he must be a faithful subject; but if he pleases, and when he pleases, he may withdraw from this duty and the country together, only by selling his property, and settling under any government he may like better, or seeking new habitations in *vacuis locis*.

We wonder Mr. Locke, in his zeal for the rights of a community, made even this concession, and allowed a man such a property in his own estate as to have the power of bequeathing it even to his child. For property, or at least the inheritance, or power of bequeathing it, is, as we know, the mere creature of municipal law, and varies as to its rules all over the world. It is not derived from the law of nature, and so all jurists tell us. Yet Locke, in another place, seems to deny to the father any right to annex conditions to his bequest of an estate to a son, or rather, he denies the necessity of making any bequest at all to enable the son to enjoy it. For when he comes to treat of *conquest*, he, with a want of precision that seems astonishing, denies the power of a conqueror over the possessions of any,—not even of the conquered nation,—who have not joined in opposing him; nor even of more than the *life interest* of those who did, because *by the law of nature*, after those life interests ceased, they passed to the children *as of right*. There is no such right under the law of nature; for succession, as we have said, is the creature of positive, not natural, law. The children, indeed, generally, but not always, *take*, but because

they are for the most part the next occupants, not because they are acknowledged heirs.*

But upon our immediate subject of *conditions* to a bequeathed estate, how if there is no estate to bequeath? This, I apprehend, must be the case with by much the greatest number of citizens of any nation existing. What estates in land or money have thousands of honest Englishmen, who yet never dream of renouncing their allegiance to the state which protects their persons, though they may have no property? If the meanest of them be harmed in their bodies or their liberty, by nobles or princes, or even the King himself, the law gives him the same redress as it would to one of the highest degree. Are they not, then, bound to own and obey the law; that is, the government which protects them? And are not protection and allegiance, in the language of all the most devoted radicals, always reciprocal?

This, however, Locke himself admits to an extent so strangely inconsistent that it overturns nearly his whole theory, in regard to the right of renouncing an allegiance to a government to which a consent has not been given.

He allows two sorts of consent; one in form, the other tacit. Between the consent in form and the tacit he makes a great distinction. The first, he says, binds for ever; and the man who gives it "can never be again in the liberty of a state of

* See Blackstone on Title by Occupancy.

nature." But the last being only the consequence of the possession of property, whether in lands or goods, or of inhabitancy, even though only for a time, it ceases, and may be withdrawn whenever, by sale or donation, the property is parted with; in which case the allegiance becomes merely local and transitory.*

Now, the first observation upon this is, obviously, that the whole hypothesis, as to the necessity of consent to constitute a lawful government, is, if not retracted, at least rendered nugatory; because we here see, that the mere circumstance of sojourning in a country, much more the possession of lands or goods within its pale, testifies an implied or tacit consent and promise of obedience to the government, quite sufficient during the possession to make it a duty to obey it, as if oaths to that effect had been actually taken. The whole doctrine, therefore, (granting all that is asked for the freedom enjoined by the law of nature,) is reduced to this,—that allegiance, or implied consent, does not, as according to our laws it does, depend upon birth: an axiom which in the closet, perhaps, though not in our law courts, might be granted without much damage to the cause of justice.

On the other hand is to be considered how totally it alters the whole nature of patriotism, and extinguishes the love of country, by reducing our local preferences to mere self-interest, without one spark

* p. 292, 293, 294.

of that generous flame which has kindled so many great and noble actions, and excited all the charities of kindred, so as to exalt us into superior beings. Warmed by such feelings, how may not a few acres of rough uncultivated soil, a sea-beat promontory, a barren rock, be made to appear a heaven upon earth, the abode of wisdom, and the nursery of heroes! It was this that kept up the courage of Ulysses through twenty years of persevering struggle, in order to revisit his beloved Ithaca. It is this which supports the rugged Highlander through the long exile of numerous campaigns, fully rewarded by the mere hope of once again *setting his foot upon the heather*; and it is this that, while it increases, cheers the exertions of the Swiss to regain his native mountains, although the thought of them melts him into tears if he but hear the air that charmed his youth, when it called home the wandering herds of his village to their nightly shelter.

All these are really the inalienable rights of nature; yet all these would Locke extinguish, by setting up a theory which, for the sake of making men, as he thinks, more independent, destroys their love of their native soil; and, by converting them into citizens of the world, under the notion that the world, by this natural equality, is before them where to choose, deprives them of every impetus to action but that of sordid self-interest.

This endeavour to erect our knowledge of liberty into a regular science, to create a scheme of princi-

ples, and demonstrate what we think neither requires, nor ever receives, demonstration *à priori*, (the right of self-defence against a violator of law, whom we cannot otherwise resist,) is, in our opinion, the first and fundamental error in the book of this great man. There are other what to us appear errors also, which we shall now proceed to consider.

One of them may be classed under the same head as the last we have noticed, namely, the deduction of what, every one will agree, is convenient, is wise, and obviously proper, (but which he is not content to take under that recommendation,) from a positive *law of nature*; — I mean the governing by standing known laws, not extemporary decrees, which last is despotism.* Every body must feel that despotism, according to our general experience of human nature, is, for the most part, a very bad thing. I say, for the most part, because it is not invariably so. Were Trajan or Alfred always to reign, or were Socrates a king, we might question whether the “*salus populi*,” — that loose, vague, and unprecise phrase, which has often been the father of so much injustice, so many errors, so many murders, and which is the favourite authority for most of Locke’s theories, — would not be better consulted than by the myriads of standing laws made and administered for our protection by demagogues.

Be it, however, that known laws are better than arbitrary power, which no one will dispute. Why not

* The rules.

be content with the reason of the thing? Why make it necessary to fortify that principle, by making it an absolute law of our nature, which it is not, any more than to drink *wine*, or eat *animal* food, which most of us find conducive to health, or at least is agreeable to the palate. This we are certainly not *bound* to do.

Most persons think despotism is a bad form of government, (I am sure I do;) but there are others who have thought differently, — witness the Danes, the Spaniards, and the Portuguese. If consent, or, in other words, choice, is to decide all, why may it not be competent for these people to *choose* to live under a despot, who, they think, will administer their affairs better than a tumultuous assembly, though composed of themselves?

It was the apothegm of Rousseau, that if men were angels, about to choose a government, they would decide for a republic. Others, with better reason, think, that *if* men were angels, they would choose autocracy, the autocrat being God.

This liberty of choice, however, does not please Locke, who lays it down as nothing short of the *natural law*, that nothing arbitrary should or can be permitted in a government. Hence, he says, “the obligations of the law of nature cease not in society, but only in many cases are drawn closer. Thus it stands as an *eternal* rule to legislators, as well as others. The rules they make must be conformable to the will of God, of which the law of nature is the

declaration, and the fundamental law of nature being the *preservation of mankind*, no human sanction can be valid against it.”*

What may, or may not, be for the preservation of mankind, may be made a question which Moses, Lycurgus, Appius Claudius, and the tribunes of the people at Rome, might disagree about: quot homines tot sententiæ. But we are willing to take these maxims as truisms. Still the question will be as to the practices founded upon them, upon which (from the various, differing, and sometimes contradictory notions of what is, or is not, prescribed by the natural law,) we are left as much at sea as ever. It is remarkable that Locke himself, in a very few lines after, has this language: — “For the law of nature being unwritten, and so nowhere to be found but in the *minds of men*, they who, through passion or interest, shall miscite or misapply it, cannot so easily be convinced of their mistake, where there is no *established judge*.”†

This also is true; but the remedy proposed, and its asserted foundation, which, he says, is in the law of nature itself, may and does admit of much question.

For he holds, that, on account of this uncertainty, “the legislative or supreme authority *cannot* assume to itself a power to rule by extemporary arbitrary decrees, but is *bound* to dispense justice and decide the

* p. 305.

† p. 306.

rights of the subject by *promulgated standing laws and authorized judges.*" *

That this is wise and advantageous to the community, is clear; but how we are bound to do it by the law of nature, conveying the will of God, remains still to be proved. Even the conclusion in its favour, which forms its basis, is not clear, much less irresistible. For who is to say, with certainty, that these *promulgated standing laws*, merely because they are promulgated, are in conformity with,—that they may not even be opposed to,—the law of nature? It is at least certain, that the predicates of *promulgation* and *permanency* do not necessarily denote, much less prove, such conformity. It was a *promulgated* and *standing* law of some ancient people, that strangers were to be considered as enemies; and so we translate βαρβαροι or barbarous, at this day, although its real meaning was only strangers. The droit d'aubain (jus alibi natûs) in France was *promulgated* and *standing*; yet what more contrary to natural equity, — that is, the will of God? Again, who is to answer for judges, merely because they are *authorized*? The judges of Israel were authorized, yet they had the power of kings. Samuel was arbitrary enough, who represented and spoke the will of God himself. Kings originally, for the most part, were *authorized* judges, yet they pronounced what decrees to them seemed best. All depended upon their personal virtue, or

* p. 307.

personal wickedness. Jeffries was an authorized judge.

We see, then, into what difficulties and inconsistencies the wisest may be betrayed, when they desert practical wisdom for theory, especially if the theory be to support a favourite doctrine. The whole of this system of Locke is merely to beat down the lawfulness of any thing like arbitrary power, (the object of his and every body's just hatred,) even although it may be the lawful constitution of a state, and that even authorized by his favourite requisite — *consent*. But for this purpose, finding this in the way, he will not allow consent in these cases to have its fair influence, and therefore sets up the law of nature against it, which, being the mode (how loosely he cares not) of declaring the will of God, "no human sanction," he says, "can be valid against it."

The phrase of the LAW OF NATURE has a deserved popularity attending it; but it also has this defect, that, being, as Locke himself allows, "unwritten, and only to be found in the minds of men," each individual mind is the judge of it. We have seen how Locke himself judges of it in regard to arbitrary decrees: but this seems less wild than his notion of the rights of conquest, and the right to property in the children of the conquered.

In the first place, he makes a distinction between conquest in a just and an unjust war: as usual, very proper in the abstract; very uncertain in the application. For who is to judge of the justice or injustice

of a war? Mr. Locke will say, himself. If so, any man; and if any man, the party supposed by him to be in the wrong. The appeal, therefore, is to the fortune of arms, which, except according to the old notion of the *specific express* interference of Providence upon an appeal to him, now justly exploded, is no appeal at all.

Well, however, fortune favours the wrongdoer, and the injured party is conquered, submits, and, to escape death or slavery, — which, Mr. Locke, with other jurists, allows it is the right of the conqueror to inflict, — agrees to terms, upon which his life and liberty are spared. Mr. Locke says that the cause being originally unjust, he may break those terms whenever he can, because they were imposed upon him by force, and against his will; and if he cannot, his children, or their children, to the farthest generation, may.

The consequence of this would be, that no conqueror, be his cause just or unjust, would ever consent to grant terms; and universal massacre, or eternal slavery, would, as it once almost did, become the law of the nations of the world.*

How dreadful this would be need not be asked, and all this is owing to the radical fault of popular jurists, like this gifted person, in always pushing abstract notions to extremity in practice. Grant

* As well might a breach of parole, after life had been spared in battle, be excused by a reference to the *opinion* of him who is spared on the cause of the war.

that a wrong cause cannot be made right by conquest; grant, even, that the terms accepted were *imposed* by the conqueror, and not sought for by the conquered (which is by no means clear); having accepted and *profited* by, is he not bound to fulfil, them? As to its being in a wrong cause, from the want of a common judge, it being impossible to decide, all jurists agree, that when the contest is begun, each party, as far as the laws of war are, if we may so say, *technically* concerned, are to suppose themselves and act as if they were in the right, and all neutrals are bound to conduct themselves on the same supposition.

However this may be, our philosopher holds that the original justice of the cause of the vanquished (about which he allows, as we see, no doubt,) can never be waved, but prevails to eternity to be asserted by posterity, whenever opportunity offers. "Who doubts," says he, "but the Grecian Christians, descendants of the ancient possessors of that country, may justly cast off the Turkish yoke, which they have so long groaned under, *whenever they have an opportunity to do it?*"*

That they, or anybody, may or would cast off a yoke too galling to bear, ought not to surprise us; but that they would have a right to do this, contrary to a convention made 500 years ago, by which their fathers' lives were spared, by which, and only by which, they themselves are now in existence, and to

* p. 354.

which they and their ancestors during all that time had submitted,—and that they may do this of right, because they *now* discover that the original cause of their conquerors was unjust,—is, according to our principles, wild, unsound, and dangerous doctrine. If Locke were asked to prove the title of these Grecians themselves, whose descendants had been conquered by the Turks, what could he reply?

But the cause of this theory is evident. As mankind, according to him, were by the law of nature born, under whatever circumstances, free and equal, so they always remain so under that law; and all alterations in their state being palpable encroachments of power in an unjust cause, they may be forever opposed,—by arms, if necessary,—until the freedom and equality are recovered, no matter what sanctions they or their fathers may have given to a new settlement; such sanctions, says the philosopher, being contrary to the law of nature, that is, (where it can be understood,) to the will of God.

Strange and wild as all this generality of doctrine appears, it is harmless in comparison with what follows in the practical details. For, first, even where the conquest is in a *lawful*, much more in an unlawful war, he makes a distinction (as novel, we apprehend, as it is surprising,) between those of the offending state (though all belong to and are incorporated with it,) who actually “concur, assist, and consent to oppose” the conqueror in the war, and those who do not.

His reason for this contravention of all our notions upon the subject is, as usual, drawn from the law of nature; and, as usual, without adverting to the fact, that, the interpretation of it in particular cases being left to every individual, what may or may not be thought lawful or just, as far as it is to influence a particular conduct, cannot be satisfactorily determined between the parties concerned. “The people,” he says, “having given to their governors no power to do an unjust thing, (*for they never had such a power in themselves,*) they ought not to be charged with the injustice of an unjust war, any farther than they actually abet it.”

Now, in the opinion of all jurists, where there is no common judge, (as there is none between nations,) each state interpreting the laws of justice as they think right, that is, in their own favour, both are to be deemed in the right so far as the laws and consequences of the war are concerned.

But even this is not necessary to show the error of the strange paradox, that men who have united themselves to stand or fall in a given society, and have a community of interests, and therefore of conduct, (being in these respects one and indivisible,)—men, who, if the event of the war had been favourable, would have profited in common with those who actually fought,—do, nevertheless, if the event is adverse, *preserve their individual capacity*, as if they were still personally free, and had never so united themselves. Nay, he goes farther than this; and

though he allows the conqueror a right over the lives and persons of those who oppose him, that is, though he may kill or reduce them to slavery, he has no right over their property. Can this hold for a moment? Is it common sense, much more common justice? If it is, what errors have all belligerents been in, particularly the English, when they have made prize of *innocent* merchants, who never joined their own country, it seems, in the wars against them! How have all our courts of admiralty disgraced themselves by their infamous judgments of confiscation!

And upon what is this confounding of all relations of rights and duties founded? Again, upon the law of nature, — from its vagueness, a most convenient anvil upon which to hammer out any theory we please to entertain on political philosophy.

Locke allows a conqueror, indeed, so far a right to make free with the possessions of the conquered as to indemnify himself for the expenses to which the aggressor has put him. But even this with some hesitation. "*Perhaps*," he says, "he may have *some* right to them (the goods), to repair the damages he has sustained by the war, and the defence of his own right;" and this he illustrates with this admirable sophistry, "that because I may kill a robber who sets upon me in the highway, I have no right to take his money, which would make me a robber too."

When I read these passages fifty years ago, I shut the book, and asked if this could be the reasoning of

Locke? That even in war we are not to do *unnecessary* mischief, is one of the most sacred duties of the Christian law of nations; but, not to advert to the immensity of the damages which the conqueror may have sustained, particularly in a long war, is he not, as a matter of justice, entitled to deprive his enemy, though he has spared his life, of *all* means of renewing his aggression, and therefore to take possession of his country, much more of his goods and wealth, should that be necessary for his security? In addition to this, may not the possession of the country wrongfully detained from him be the very cause of the war?

The last French war lasted nearly twenty years, and cost our country many hundred millions; the indemnification of which alone would have exhausted all the wealth we ever took, or ever could have taken, from France.

In the first war waged by Frederick II. of Prussia against Austria, Silesia was the very bone of contention. The King being successful, was he not to retain the object for which he was driven to arms?

What has Locke to oppose to this? Certain visions concerning rights in a state of nature, which we will now consider.

"Let the conqueror," says he, "have as much justice on his side as could be supposed, he has no right to seize more than the vanquished could forfeit. His life is at the victor's mercy; and his service and goods he may appropriate, to make himself

reparation; but he cannot take the goods of his wife and children; *they*, too, had a title to the goods he enjoyed, and their shares in the estate he possessed. For example; I, in the state of nature, (and all commonwealths are in the state of nature, one with another,) have injured another man, and refusing to give satisfaction, it comes to a state of war. I am conquered, and my life is at mercy, but not my wife's and children's. *They made not war*, nor assisted in it. I could not forfeit *their* lives; they were not mine to forfeit. My wife had a share in my estate; that neither could I forfeit. And my children also, *being born of me*, had a *right* to be maintained out of my labour and substance. Here, then, is the case. The conqueror has a right to damages, and the children to their father's estate for their subsistence; for as to the wife's share, whether her own labour or compact gave her a title to it, it is plain her husband could not forfeit what was *her's*. What must be done? I answer, *the fundamental law of nature* being, that *all* (mankind), as much as may be, should be preserved, it follows, that if there be not enough *fully* to *satisfy* both, viz. for the conqueror's losses and children's maintenance, he that *hath and to spare* must remit something of his full satisfaction, and give way to the pressing and preferable title of those who are in danger of perishing without it."*

Now, upon this exuberant power attributed to natural law, we have only to remark, that it assumes,

* p. 349,

as a right of nature in its wildest state, what, we have said, is the creature only of a state of society. Such is the law regulating property, which is altogether conventional, and might, or might not, assign to the wife and children what is here supposed to be theirs by a fundamental law, before any laws were known.

As to the axiom, that he that hath and to spare must give way to the preferable title of those who are in danger of perishing, the first remark that occurs is, that the conqueror himself may be the person in danger of perishing. But admitting the axiom as a moral duty, the case must be first established, that either party would actually be in this danger, before we are called upon to decide; for, whatever humanity might determine, the extreme of necessity alone could establish the demand as an absolute right. At the same time it is to be observed, that the case demands, as a right of nature, that these persons who, we say, have no rights but those of convention, should be even *fully satisfied*, before the conqueror's claim should be heard. According to this dogma, therefore, by the fundamental law of nature a man, not merely who has been at war, but any beggar who has nothing, is not merely to be relieved, but *fully satisfied*, out of the estate of him who is rich, whenever it shall please the needy man to apply for it.

The question as to property, however, is of far less consequence than the inroad he would make in, perhaps, the most universally received axiom in all

the laws of nations, and one which this very treatise, in other parts, mainly supports,—that all the subjects of a state, be they ever so numerous, have towards other states but *one* individual character. Without this, even among themselves, what becomes of the favourite, and, we allow, indispensable maxim, that a majority binds the minority, even though only of one? How would our own revolution have been carried? How would King William's title (the only lawful one in Christendom according to Locke) have been established, but for this inseparableness of character among the individuals forming a nation? The question for a king against a regency, that is, for William to the exclusion of James, in the House of Lords *of the convention*, was carried but by *two* voices. Were, then, the fifty-nine who voted for it to be considered as Englishmen, and the forty-nine against it to be citizens of the world? In the American and last French wars, Mr. Fox and his party voted invariably against the measures of the majority. Was this majority, alone, the nation, and Mr. Fox no part of it?

It would be the same as to the proportion of the people who sided with one or other of the state parties in 1689. Were the Jacobites, after the Revolution, ever spared by William under the plea that they were independent *individuals*, separated from the state? Yet his champion, Locke, holds distinctly, that a conqueror, even in a just cause, "over those *who opposed him not*, and the *posterity* of those who

did, hath *no right of dominion*; they are free from any subjection to him; and if their *former government be dissolved*, they are at liberty to begin and erect another for themselves." * According to these subtleties, several millions of the inhabitants of the British isles, who did not oppose William or the revolutionists in 1689, but who neither approved of him nor the revolution, had a right, *their old government* being dissolved, to begin and erect another for themselves. In other words, the state ought to have been separated into two communities.

But, again, should it be said those Jacobites consented, Locke has an admirable resource. For, first, he says, then, his doctrine of the necessity of consent to make a government lawful is proved. Next, that the consent was forced, and therefore, by the law of nature, not binding. † These consequences of his doctrines, affecting his favourite event, for which they were expressly written, he certainly did not intend. But, even without such consequences, they seem (*mirabile dictu!* in such a man) to be absolute puerilities.

In the same spirit of generalizing without reference to given cases, (always so dangerous,) and of applying the ready instrument of the law of nature to cases which may be exceptions to its rules, he

* p. 351.

† "The government of a conqueror, imposed by force on the subdued, against whom he had no right of war, or who *joined not in the war against him* WHERE HE HAD A RIGHT, has no obligation upon them." p. 352, 353.

says, that "granting that all members of a body politic are to be considered as one, and so to have forfeited their lives, this will not affect their children. For a man has no power over the life of his child, and therefore no act of his can forfeit it. So that the children, whatever may have happened to the fathers, are freemen; and the absolute power of the conqueror reaches no farther than the persons of those he subdued, and dies with them. And though he may make them slaves, he has no such right of dominion over the children." *

This may be abstractedly true, but practically contradicted a thousand times over. Many reasons may occur under the same law of nature,—which, he justly says, is only the law of reason, which every man must interpret for himself,—wherein such a man may think it right to imitate the Deity, who visits the sins of the fathers upon the children. How many children have not been destroyed and cut off from the land of their fathers, on account of their fathers' wickedness, by the express command of the Almighty; not by way of punishing the fathers, who could not feel it, but because it was reasonable to suppose the children had been, or would be, bred to the same crimes, and would so breed their own progeny. Of this we need not, as examples, point at the Deluge, the fate of Sodom, the extirpation of the Canaanites, and the dispersion of the Jews to this day. Yet the law of nature, if, like no other law, it is to have no

* p. 353.

exceptions, no latitude of interpretation, would, in this part of it, be inconsistent with another part, quite as pressing, and still more important,—the right of self-defence. Did we seek in our own law a justification for this, (the authority for which, however, as it contributes to the power of kings, Locke would probably deny,) how otherwise can the law of forfeiture for treason by the father be justified towards the son? How does Locke himself reconcile this doctrine with his darling measure,—the election of William to be our king, to the disinherison of Anne, the child of James; or with the preference of our present house to that of Savoy?

In a neighbouring country we lately saw a monarch and his whole family dethroned and exiled for an atrocious invasion of the law. But though the fate of Charles X. might have been just, how, upon Mr. Locke's principles, could the exclusion of the Duke of Bordeaux be justified? He was a youth, in a state of pupillage, and could not possibly have shared in the crime which ruined his family.

But, above all, in a similar case, can we forget the argument of all the Whig lawyers and statesmen, when reminded of the son of James,—that, even if he was not supposititious, as he would probably be bred to popery and arbitrary power, it was better to pass him by, and elect a dynasty totally new. They had "scotched the snake, not killed it," while Fleance lived.

These considerations alone, one would have thought, would have repressed these startling doctrines, which, from over-fondness for theory, this great reasoner has hazarded.

But nearly the whole of his notions of the law of nature, in regard to property, and succession of property, may be contested. That nature tells us to take care of our children, is true; and he that would let them want, is worse than the brutes. But that she obliges us to endow them with more than we think necessary for their sustenance, or deprives us of our discretion in distributing our fortunes, I am yet to learn. A son may be an idiot, a profligate, a traitor, a brute. Is he, notwithstanding, to set his father at defiance, and force his way, as of right, into his possessions after his decease? By no part of the law of nature, therefore, that I know of, has the son a right to inherit the fortune of his father. In some countries, especially in the east, (despotic, if you will,) the emperor is the heir of all his subjects; in some, the eldest son succeeds; in some, the youngest; in some, all. When there is a will, however, though made from caprice, or in a fit of spleen, or revenge, the heir-at-law (I will not say forfeits, but) has no right to the estate. And thus the whole reasoning of this great reasoner upon all other subjects, as far as it founds the rights of a child against the conqueror of his father upon the natural law, is based upon premises egregiously false.

The notion, that only those who are found in arms, or who are ready to assist those who are against a conqueror in a just war, are punishable, and that those of the same nation can be considered as if they were not of the same nation, if they did not arm or assist, is equally fallacious. Every citizen of a state arms in its defence, or is bound, and must be ready, to do so, whether the cause be right or wrong, or else he is a traitor. What should we say to the soldier who deserted his post, or left the field where his countrymen were engaged, because he did not approve the cause that brought him there? What army could act, or what nation be safe, where this division of its members could be tolerated. Every man must act, or be ready to act, as the state orders him, or renounce the privileges belonging to that state.

Mr. Locke, however, appeals to Scripture in support of one of his most startling positions, — namely, that no promises of fidelity, no treaties, no length of subjection, no indulgences, no incorporation with the conquering state, can oblige the vanquished nation, if the war was without just cause, not to violate every tie they may have submitted to, and redeem what they have thus so solemnly surrendered, at any distance of time. Nor, even if the war had been just on the part of the conqueror, can the posterity of the wrong-doers, according to him, be bound by any treaties or submission of their fathers.

This we have already canvassed, but not a Scrip-

tural authority, on which he, in part, founds this unheard-of doctrine.

The precedent, if precedent it can be called, is that of Hezekiah, King of Jerusalem; but how it supports the doctrine in aid of which it is cited, it baffles the understanding to comprehend.

It is founded on a single, the seventh, verse of the eighteenth chapter of the second book of Kings, "And the Lord was with Hezekiah, and he prospered. Wherefore he went forth, and he rebelled against the King of Assyria, and served him not."

To rebel, is with many a very wide, and sometimes a very popular phrase; but with nothing but this naked verse before us, I imagine it would be difficult for any one, the most ingenious, to gather more, than that the Lord favoured Hezekiah in a contest with the King of Assyria, brought on *by his not serving him*; whatever that means, for whether bound in justice to do so or not, does not appear.

Mr. Locke's comment upon it, however, is this:—

"*Whence it is plain, that shaking off a power, which force, and not right, hath set over any one, though it hath the name of rebellion, yet is no offence before God, but is that which he allows and countenances, though even promises and covenants, when obtained by force, have intervened; for it is very probable, to any one that reads the story of Ahaz and Hezekiah attentively, that the Assyrians subdued Ahaz, and deposed him, and made Hezekiah king in his father's*

lifetime; and that Hezekiah by agreement had done him homage, and paid him tribute all this time." *

Now, in this comment, it is evidently assumed by Locke, that *force*, and not *right*, had created the power of the Assyrian over Hezekiah, for not one word is said, before or after, of the manner in which it arose. For, waiving for a moment the conclusion drawn from these suppositions, (for mere suppositions, and those very far fetched, they are,) I *have* looked attentively at the story of Ahaz and Hezekiah, and I cannot find a vestige of the probability asserted, either as to conditions imposed upon them by power and not right, nor that the Assyrians deposed Ahaz, and made Hezekiah king in his father's lifetime. On the contrary, being pressed by the King of Syria, he sent to the King of Assyria, saying, "I am thy servant and thy son, come up and save me out of the hand of the King of Syria." This may probably denote, that he was bound by some obligation to the Assyrian, but by no means that it was through an unjust force.

The account goes on to say, "And the King of Assyria hearkened unto him."

He did so by laying siege to Damascus, where Ahaz joined him, and committed great idolatries; but not a word is said of dethroning him, and making Hezekiah king during his lifetime. On the contrary, the concluding verse of the chapter says, "And Ahaz slept with his fathers, and Hezekiah,

* p. 358.

his son, reigned in his stead;"—an extraordinary way of relating that a son mounted his father's throne during that father's life.*

The account in the Chronicles varies a little, and but a little,—certainly not in essentials,—from this. The King of Assyria is there made to *distress* Ahaz, but did not strengthen him. He distressed him, by inducing him to make him great presents; yet he so far relieved him, as to take Damascus. But no word is said of dethroning him; and though he was not buried in the sepulchres of the kings, yet no reason is assigned for it, unless his abominable idolatries may be supposed one. Certainly his being dethroned is not a reason mentioned; and the chapter concludes in the same manner as in Kings, — "He slept with his fathers, and his son reigned in his stead."†

This being as stated, (and I have taken pains not to mis-state it,) I am really at a loss to discover the reasons for Mr. Locke's "very probable" supposition as to the dethronement of Ahaz; the making his son king during his life; the agreement to do homage and pay tribute to the Assyrian; in short, the power imposed upon Hezekiah by *force*, not right; and the *consequent* favour of Heaven to his enterprize, in shaking off that power. For the sake of Mr. Locke's accuracy, and from the veneration due to his name, it is probable that I am myself mistaken; but so it is.

But even should Mr. Locke be right in this extra-

* 2 Kings, 15.

† 2 Chron. 28.

ordinary, and, as at present we are bound to think, groundless comment, will it serve his purpose, or prove his point, that God, as a general proposition, approves and favours the breach of the most solemn treaties and covenants of fidelity made for a valuable consideration, viz. the sparing of life, perhaps of property, because the original cause of war may have been unjust on the conqueror's part? Still more, will it prove that these violations of covenants may, by the sanction of Heaven, be effected at any distance of time, and by the most far off descendants of the party originally aggrieved?

The instance quoted, at least, does not bear out this last supposition; for Hezekiah, whom God favoured, was himself the party injured. He did not rebel to avenge his ancestors. So far, therefore, the authority palpably fails. Yet, after all, supposing the fact as the extraordinary and exaggerated commentary states it, will it amount to that approbation of the Almighty which is asserted?

The ease with which texts of Scripture may be tortured into almost any meaning and any precedent, is proverbial, and never more obvious than in the comment before us. In the deep scheme of Providence, by which all the actions of men are governed without trenching upon their free will, who is to say what is really to influence the Almighty in the vast scheme of his government; or what, upon the whole, to him appears right or wrong? If success in wickedness be a proof, how often does he seem to favour

wickedness? His being *with* Hezekiah in this revolt, does not *necessarily* show more than that he chose it should succeed; for what after purpose, who can tell? *Possibly*, may another commentator say, to punish the Assyrian for having broken many treaties through the means of a treaty-breaker. Thus, mere retribution. If favouring, or being *with*, a person, mean, that his moral conduct is approved, and Locke's supposition is right, that Hezekiah had been injured, the moral conduct of the Assyrian, when he did the injury, was equally approved, for he was equally successful, and God, therefore, was equally *with* HIM. If so, God approved and countenanced the tyranny, oppression, and injustice practised on Hezekiah, as well as his revolt against them. Nay, he did so in an infinitely greater degree; for as no wickedness, through the most infamous cruelty, idolatry, and debauchery of every kind, was ever greater than that of the kings of Assyria, so no empire was more successful or extended throughout the world. Can we forget the exclamation in Isaiah, beautiful as forcible, "O! Assyrian! *rod of mine anger.*" Or the burst of Milton,

"The supreme good, t'whom all things evil,

"Are but the slavish officers of vengeance."

Here, then, as there is no proof to the contrary, Hezekiah might with equal probability be called this slavish officer, as well as a defender of right against oppression.

There is another citation of Locke from Scripture, which ought to have shown him (I speak it with

reverence,) the inconvenience (to say no more) of relying upon particular texts or narratives, in support of doctrines as to what, abstractedly, God does or does not approve, and the danger of inferring approbation from success. If ever there was, to our apprehensions, an unjust seizure of a country, it was when the Israelites, in their march through the wilderness, destroyed the Amorites, and took possession of their land. For what? Because Sihon, their king, refused them passage (we think prudently, for they were hundreds of thousands strong). Grant that they might have forced their way, they could do no more. But they seized the whole land and kept it. Years afterwards the descendants of these Amorites, now the children of Ammon, took arms to recover it. But Jephtha the judge of Israel said no, for it was God's doing, who gave us the victory. They fought, and Jephtha conquered and kept the land. What does Mr. Locke say to God's approbation of revolt *after any length of submission*? But who does not know the difficulty (I do not say the impossibility,) of reconciling the prosperity of evil-doers with the moral government of Providence? How long ago was the sentiment uttered, "Crimen deorum. Sylla tam felix!" To reason about it would be vain; we have nothing to do but to wonder, reverence, and submit. Mr. Locke, as it seems to us, had better have left his appeal to Scripture alone.

We turn with more satisfaction to his account of *tyranny*, which is no more than justly described as

the usurpation of power, whether in the executive or legislative, either not warranted by or against law. In this light he is no more than correct when he says that wherever law ends tyranny begins.

Two particulars, however, are here remarkable from so great a champion of the rights of a people over delinquent sovereigns. First, that the persons of sovereigns cannot be otherwise than *sacred*, unless they themselves descend to personal violence, which can only be resisted by force. Upon this sacredness, he allows, must depend much of the security of the laws.

Next, what in the body of this work we have laboured to prove, that the legislative, by usurping authority not intrusted to them, can break their trust, and, therefore, forfeit it, as well as the executive, or a king. And this they do when they misuse their power, or assume one over the lives and properties of the community, who only made them delegates for their own general benefit and preservation, not their destruction.

Yet this position is laid down in all that abstract generality always so dangerous from its liability to be misapplied. For the question here, as with a monarch, perpetually occurs,—what is general benefit, what preservation? Of these there may be such different judgments, that what one man may think preservation another may deem destruction. Those who supported the late French war thought it would preserve the nation; those who opposed, thought it would destroy it.

Locke, indeed, in some measure, attempts to qualify his proposition, by saying, that “he who appeals to Heaven, must be *sure* he has right on his side.” *

Another fallacy: for being the party, as well as judge, how *can* he be sure?

He adds: “It must, too, be a right that is worth the trouble and cost of the appeal.” Again, “who that goes to war can ever calculate this?”

There is a still farther condition: for this is to be, as “he will answer at a tribunal that cannot be deceived, and will be sure to *retribute* to every one according to the mischiefs he hath created to his fellow-subjects; that is, to all mankind. From *whence it is plain*, that he that conquers in an unjust war, can thereby have no title to the subjection and obedience of the conquered.” †

This *plainness* we do not perceive; for the consequence does not flow from the premise. God does not always, nor nearly always retribute the mischiefs done. Witness Poland and a thousand other instances. A conqueror too in an unjust war may not have a title to the obedience of the conquered; but it does not follow, that because a man, with a just cause of war, chooses to make it, even though it may not be worth the trouble and cost of the appeal, (of which *he* is the best judge,) he has, therefore, no right to the obedience of those unjust persons whom he has conquered.

All this deficiency in satisfactory result is the

* p. 342.

† *Ib.*

mere consequence we have adverted to, of bending practical cases to theories in favour of liberty, to which they do not belong.

Thus, though Locke allows that the legislative may betray their trust and usurp, (that is, become tyrants,) as well as a single sovereign; yet (preserving the bias of his mind,) he has the salvo, that it cannot be so often attempted, from the want of means; which may be true. But while the delinquencies of James are broadly designated in his general theorems, the thirty tyrants of Athens and the decemvirs at Rome are the only examples he adduces of tyranny in the many. He wholly passes by the infamous judgments upon illustrious patriots which so often disgraced the ancient popular assemblies, Socrates, Phocion, and others; and, as for the Long Parliament and the Popish Plot, which teem with usurpation, they seem never to have occurred to his contemplation.

We approach to a conclusion, but cannot take our leave of this important and interesting work, (interesting, from what appears to us its very defects, on account of the deserved celebrity of the writer for integrity and patriotism, as well as intellect,)—we cannot take leave of it, without adverting once more to its radical fault. Such must ever be the attempt to reason upon facts or propositions as proved to come under certain truisms or general principles, although there may be endless differences of opinion as to the proofs of their doing so.

This possibly cannot be better illustrated than by

the perpetual allusions in the work to the injunctions of the law of nature and the will of God.

No doubt of the forcible truth, that when we discover them,—which Locke properly holds can only be done through our reason,—we are bound to obey them. But, alas! what is the reason of man? Ever varying, ever inquiring; never resting, never satisfied; different in different men; often so in the same man; and although its nature and attributes may be unchangeable, its conclusions liable to perpetual, and even momentary changes, as passion or the senses present the same things under different appearances.

Hence, though all must be eager to obey the law of nature, and adore the will of Heaven, what two men can be certain of the agreement of their opinions concerning them? We have seen, in the use he makes of the passages in Scripture respecting Hezekiah and Jephtha, into what a contradiction of practical deductions Locke himself fell. And if he failed, who can succeed?

This radical fault alone causes him to embrace another opinion, which, however favoured by the besotted and puffed-up vanities of the self-called godly and elect among the Puritans and Covenanters of older times, one would have thought it would be impossible for such an unshackled thinker as Locke to have entertained. I mean, that an appeal to arms, whether in foreign or civil war, is an appeal to Heaven. I mean, not a submission to the general

providence of God over the events of the world, with a view to general and final consequences, but to his *immediate* determination on the question immediately passing, and judging it as a human judge would decide a cause before him. In this view, it is neither more nor less than the old exploded trial by battle; but were the question of the efficacy or justice of that trial brought before Locke, little doubt can be entertained of his decision. Still he maintains it in the course of discussing, perhaps, the two most important and critical questions of his work, prerogative and conquest; and he risks consequences in this reasoning which are surprising.

Cromwell, that great man, and greatest of hypocrites, in order to encourage his fanatic soldiers, used to say of the enemy—"The Lord has delivered him into our hands." So did his antagonists, the Scotch Covenantors; but Cromwell generally succeeded. He might therefore believe himself (certainly made many of his followers believe,) that their appeal to arms was an appeal to Heaven. Had he failed would the same belief have prevailed? Is it not astonishing that such a man as Locke should give into such a puerile fallacy?

But that we may not be supposed to be giving an opinion only, let us see how he actually trusts this tenet in applying it to the above subjects of prerogative and conquest.

"Prerogative," he says, "was given to be used for the good of the people, not to harm them."

Agreed. "But it is often used to their detriment!" That cannot be denied, any more than that one party may think it is detrimentally used, while another may think the contrary. If, then, there is no judge, except the parties themselves, how is it to be decided? Locke says, in the same manner as a dispute between independent states,—an appeal to Heaven, that is, to arms; and he again instances Jephtha against the Ammonites, where Heaven determined for him.

As the sum and scope of Locke's whole treatise is contained in his argument upon this point, we will give it at length, in order that every man may judge of it for himself.

"The old question," says he, "will be asked in this matter of *prerogative*.—But *who shall be judge* when this power (prerogative) is made a right use of?"

"I answer, between an executive power in being, with such a prerogative, and a legislative that depends upon his will for their convening, *there can be no judge on earth*, as there can be none between the legislative and the people, should, either the executive, or the *legislative*, when they have got the power in their hands, design, or go about to enslave or destroy them.

"The people have no other remedy in this, as in all other cases where they have no judge on earth, but to *appeal to Heaven*: for the rulers, in such attempts, exercising a power the people never put into their

hands, (who can never be supposed to consent that any body should rule over them for their harm) do that which they have not a right to do. And where the body of the people, or any single man, is deprived of their right, or is under the exercise of a power without right, and have no appeal on earth, then they have a liberty to appeal to Heaven, whenever they judge the cause of sufficient moment.

“And therefore, though the *people cannot be judges*, so as to have, *by the constitution of that society*, any superior power to determine and give effective sentence in the case, *yet they have, by a law antecedent and paramount to all positive laws of men*, RESERVED that ultimate determination to themselves which belongs to all mankind, where there lies no appeal on earth; that is, to judge, whether they have just cause to make their appeal to Heaven.

“And this judgment they cannot part with, *it being out of a man's power so to submit himself to another as to give him a liberty to destroy him; God and nature never allowing a man so to abandon himself as to neglect his own preservation: and since he cannot take away his own life, neither can he give another power to take it.* Nor let any one think, this lays a perpetual foundation for disorder: for this operates not till the inconveniency is so great *that the majority* feel it, and are weary of it, and find a necessity to have it amended.”*

Now, upon this remarkable creed we have first to observe, that the tyranny to be resisted is not con-

* p. 334.

finied to a king, or the executive, but extends to the legislative, which combines *the representatives of the people themselves*; and therefore were the House of Commons itself to abuse its trust given, as Locke truly says, for the especial benefit of the people, the people may resist them, as well as the King.*”

This is but fair. In other respects, with one or two important exceptions, these sentiments are truisms. It is true that if the executive and legislative quarrel, there can be no judge under the constitution, between them. It is true therefore they can appeal to no one upon earth.

It is true that *if* the people put their power into the hands of rulers, they could not mean harm to themselves by so doing. It is true, therefore, that if harm, instead of good, is done to them, they can appeal to no one upon earth, and may appeal to Heaven if Heaven will hear them.

But here comes the practical misapplication of these truths. It is *not* true that an appeal to arms is an appeal to Heaven; or, if it is, Heaven has so often determined against the people, by allowing unjust governments to quell and punish insurrection, and unjust conquerors to enslave independent nations, that it were better to suppose no appeal was made, than that justice from a just being was refused. It is not true that God and nature never *allow*, though

* See instances of the gross abuse of this trust in vol. i. p. 44 et infra of this Essay, in the case of the Long Parliament, and that of 1679; and illustrations of what would be such abuse, p. 99 et infra.

they may not *prescribe*, to a man, "so to abandon himself as to neglect his own preservation."

This is contradicted by the whole history of man; and the common and well-founded observation, "*Quem Deus vult perdere prius dementat.*"

It is remarkable that Locke only mentions one instance of direct successful appeal, that of Jephtha; while on the other hand he nowhere adverts (strange omission!) to those cases of successful wickedness which have been alluded to, and to which many many more may be added.

Who were ever more oppressed, or more gallant in their resistance to oppression, than the Hugonots who defended Rochelle? Who more confident in their appeals to Heaven? Who more tyrannical than the other appellant, Richelieu? But the appeal, if it *was* to Heaven, was determined against the Rochellers.

If ever there were confident appealers, or who believed themselves under special protection from above, it was the Scotch Conventiclers. Yet they were allowed, in the inscrutable behests of Providence, to be the victims of the most cruel persecutions, by the most profligate of governments.

These examples might be multiplied ad infinitum, and we would fain again, but dare not, touch upon the horrors of Poland.

What then becomes of the value, the certainty, the justice of this appeal, though to Heaven it be? Had Locke said that it was, what it is, an appeal to the sword, which is the right of the strongest, where no other right is acknowledged, it would be nearer the

truth. But to judge of an appeal to the all-seeing power, who judges by rules of his own, unfathomable by man, as if he descended from his height to sit in the judgment-seat below, to dispose of an earthly cause, is only another proof of the many he has given, that, however just his notions may be in theory, the use he would put them to in practical illustrations lamentably fails.

How many erroneous judgments, how many crimes, may not be, and are defended by the delusive generality of that supposed axiom, that God never *allows* a man to neglect his own preservation? Predestination itself could scarcely be better supported, and this alone would demonstrate the defects we complain of in the reasoning of this treatise. For though instinct may lead us, as well as other creatures, to avoid danger, yet every man, by his free will, being left to judge for himself what will or will not hurt or preserve him, how often does he not from appetite, or bad passions, revenge, ambition, lust, avarice, rush headlong on his own destruction? Of this no page in history but affords examples, particularly sacred history; every chapter of which seems a lesson on the improvidence and deliberate design of man to seek his own perdition, instead of safety,—Sampson, Solomon himself, among the Jews; Pharaoh, Sennacharib, at the head of the heathen.

I mention the sacred history in preference, because Mr. Locke seems fond of it, as conveying more distinctly the government and intentions of Heaven.

But should we turn to profane story, examples would be beyond numeration. Alexander, Antony, almost all the Roman Emperors; in more modern times, eminently, Bonaparte; and, as an instance most apposite for Mr. Locke's consideration, the object of his animadversions, James II.

As to the "antecedent law, *paramount to all positive laws of men*, by which the people *reserved* that ultimate determination to themselves which belongs to all mankind, where there is no appeal on earth, that is, to judge whether they have just cause to make their appeal to Heaven," that is, to arms; from the very terms of the proposition, there could be no such reservation. For as it is said to be *antecedent* to all the *positive* laws of men, and therefore to society, it is supposed to be a reservation of power, from a delegation of power, before any such delegation was made. Most strange that a refutation of any position of Locke can be made by the argument *ex absurdo*!

The pertinacity, however, of this doctrine as to the appeal to Heaven, and the perfect certainty of its being favourably decided at last, is not the least remarkable feature of the creed. For whatever the number or strength of the unfavourable decisions, we are never to despair. Sure of our cause (for we are sole judges of its real merits) we are to repeat the appeal for ever and for ever, till Heaven either relents or has satisfied those other objects which *for a time* prevented it from listening to us.

This he illustrates by the case of a robber, against whom, from either a denial of justice, or our own poverty occasioned by the robbery, we cannot obtain redress. "If God," says he, "has taken away all means of seeking remedy, there is nothing left but patience. But *my son, when able*, may seek the relief of the law, which *I* am denied; he, or *his* son, may *renew* his appeal till he recover his right; but the conquered or their children have no court, no arbitrator, to appeal to. Then they may appeal, as Jephtha did, to Heaven, and *repeat* their appeal *till they have recovered the native right of their ancestors*, which was to have such a legislative over them *as the majority should approve and freely acquiesce in.*"*

So here is a conquered people, (conquered in a war, confessed, if you please, by the conqueror himself to have been unjust) but who have acquiesced, even by treaty, in the conquest, say for 500 years; who yet are to preserve their entirety as a distinct and independent nation, having laws and representatives of their own, with power to bind by a majority of votes; and who are still to maintain their original right of resistance during every year of that period; and after treaty upon treaty may have been made, probably favourable to themselves, can rise whenever they are able against the power under whose dominion they have so long covenanted peaceably to live.

Can such a thing be? can this be a theorem in the

* p. 342.

law of nations? "can it be the law of nature, or the law of God?"

If this be sound, Heaven preserve us, (I speak to the honourable ancient Briton, to whom this Essay is addressed,)—Heaven preserve us still from the inroads of the Welsh!

"Ruin seize thee, ruthless king"

was in the language of inimitable poetry, the supposed cry of this injured and gallant nation six hundred years ago; and justly. For if ever there was a ruthless tyrant to his neighbours, it was the atrocious though magnanimous Edward.

Well, according to Locke, though the Welsh had made innumerable appeals to Heaven, and had been denied justice; though their princes had, to save the remnant of their rights, made treaties of condition as honourable in their circumstances as could be obtained by the oppressed from an oppressor; though by these treaties they have been incorporated with their oppressors, and have a share of the legislation of the whole empire, yet these treaties having been extorted by force or fear, they may even now appear in arms against us, "until they have recovered the ancient rights of their ancestors." Nor are there wanting many high-minded scions of their ancient stock of princes to lead them on,—the Ap Rices, the Ap Shenkins, the Gwillims, Griffiths, and Owens, who still boast, and have a right to do so, of the royal blood that flows in their veins. These ancestors, like their bards, Cadwallo, Urien, and Modred,

"Whose magic song,

"Made huge Plenlimmon bow his cloud top't head."

"These do not sleep,

"On yonder cliffs, a grisly band,

"I see them sit; they linger yet,

"Avengers of their native land.

"With me in dreadful harmony they join,

"And weave with bloody hands the tissue of thy line."

To be sure, the gracious and youthful being who now represents this line on the throne of Edward, might think it (and we for her) very hard if Lord Dynevor, for example, should attack her in her palace, till she had restored the rights of his fathers, ravished unjustly from them. She might, it is true, plead that she descended from the first Prince of all Wales, King Edward II., but that being a title imposed by force, Locke would have no mercy upon the plea.

To be serious. The Jews are a people who would best illustrate these Utopian notions of this great, but, surely here, mistaken man.

According to themselves, (the proper judges, be it observed, in Locke's doctrine,) the cause of the Romans, who destroyed them, was most unjust. Certainly they, not without reason, thought that Pompey, their original conqueror, had no right to enslave them. And though they had appealed to Heaven various times, and always unsuccessfully, yet they continued to exercise this right, spite of repulse after repulse, till Heaven, who is supposed never to allow a person to *abandon himself, so as to neglect his own*

preservation, allowed them, by that sacrilegious murder they committed upon Heaven's own Messenger, to neglect this preservation, and court their destruction, by hundreds of thousands, from the signal vengeance of Titus.

This is now some seventeen hundred years ago. They are dispersed, and have been persecuted all over the world; and though they have submitted to the laws, and professed allegiance to many states which have tolerated them, they call themselves still a nation awaiting another appeal. According to Locke, they have the fullest right to do so. Heaven may at last think the time is come when it may be proper to do them justice, for the usurpations of Pompey and Titus; and all governments under which they now live can only look upon them as concealed,—not rebels to the laws that protect them, (for that Locke will not permit,)—but legitimate enemies, between whom and such governments the state of war never ceased.

Again, I ask, can this be so?

There remain but two divisions of this famous treatise to touch upon, and after what has been already done the task will be short.

In treating of DESPOTIC POWER, and the DISSOLUTION of governments, we think we perceive the same exaggerated notions of the natural state of man, and the same inconsequential application of the theory to practical cases which we have ventured to point out in the previous discussion.

DESPOTIC POWER Locke defines to be an absolute,

arbitrary power one man has over another to take away his life whenever he pleases." This, he says, is what neither nature gives, nor compact can convey.* The reason? Because nature makes no such distinction between one man and another; and as a man can only give to another that power which he possessed himself, and he had none over his own life, he could not convey it.

This latter reason, we obviously see, can only be convincing to those who deny the lawfulness of suicide, and might, therefore, be denied by all the ancient world, and a considerable part of the present. For its lawfulness is not anywhere expressly denied by revelation; and on the prohibition by natural law there are great differences of opinion, involving much argument, research, and erudition. By this, I desire not to be thought one of those who deem suicide lawful; I only mean to remark, that there are even *now* very many virtuous and well instructed persons who deny its unlawfulness in theory. In practice, it need not be observed, that the instances of it abound. The use we make of this is, that one, an important part of Locke's reasoning against despotism over the lives of men, is unphilosophical, and not logically conclusive.

Then as to nature making no such distinction between man and man, how is this proved?

That there are the strongest and most marked distinctions in other respects, all denoting distinctions

* p. 338.

in power, is clear. Strength of body, of mind, genius, eloquence, sagacity, courage, passions of all sorts ! all these demonstrate that the intentions of nature are any thing but to create equality in the human more than any other species.

But the great proof is to be drawn from what no jurist, or advocate for equality, except Mrs. Wollstonecroft and the Amazons, have ever denied—the inequality of the sexes.

Why are not women endowed with the same rights of citizenship as men ? They have equal, and some of them very superior reason. They may be queens, and choose ministers. Why not be ministers themselves ? They may be executors, guardians, trustees. Why not voters ? They may summon parliaments. Why not be members ?

The same reasoning applies to minors. Why are they in a state of tutillage after they can speak, walk, and have a choice ? Why is the power of choice confined to any particular age, to give them the right of consenting who shall govern them, whether their fathers, before they are in society, or their chiefs afterwards ? Why does the age differ in different countries ? A youth of twenty may judge as well as one of twenty-one ; of eighteen as of seventeen. At eighteen indeed he may be a king, and command an army, but cannot exercise an elective franchise.

Thus all these arguments for equality under the law of nature are contradicted in practice, and are, therefore, mere arbitrary assumptions.

But we all are equal in the eye of Heaven ! That, we see, in the case of the sexes and of minors, is disallowed by the theorists themselves.

How then is it known ? By reason ? If we reason on the differences of our lots that seems to contradict it.

By the justice and equal love of his creatures in the Creator ?

That immediately brings us to religion, which is of a far higher consideration than natural law.

But passing these as over-refinements, and only mentioned as answers to the over-refinement of Locke, let us see what *does*, in his mind, permit the exercise of this right over the life of another.

And this is "*forfeiture*, which the aggressor makes of his own life when he puts himself into the state of war with another."*

Well then, there *is a lawful* cause for despotism ; and as wars are the most frequent occurrences in the history of man, and, in the antient times especially, there seem to be few others, will not this at once account for the despotic constitutions of most states in the world ? The Assyrian, Egyptian, Persian, Macedonian, and Roman Empires sprang from wars that were ceaseless. Were those of Charlemagne, or the Caliphs, or the Turks, derived from the soft arts of peace ?

So much, then, for foreign wars, in which the conquered having all forfeited their lives, the sentence

* p. 348.

was mitigated on their submission to absolute power in the conqueror.

Might not domestic wars or *rebellions* come within the same rule?

The language against aggressors in war is strong enough. "Having quitted reason," says Locke, "which God hath given to be the rule betwixt man and man, and the common bond whereby human kind is united into one fellowship and society, and having renounced the way of peace which that teaches, and made use of the force of war to compass his unjust ends upon another, where he has no right; and so revolting from his own kind to that of beasts, by making force, which is theirs, to be his rule of right, *he renders himself liable to be destroyed by the injured person*, and the rest of mankind that will join with him in the execution of justice, as any other wild beast or noxious brute with whom mankind can have neither society nor security. And thus, captives, taken in a just and lawful war, and such only, are subject to a despotical power, which, as it arises not from compact, so neither is it capable of any, but is the state of war continued."

Now, it is obvious that this strong language applies itself to the full as much to the aggressors in domestic as in foreign wars. For may not the people, or a large part of them, put themselves in a state of war with their governors, and act like *wild beasts or noxious brutes*, and so *forfeit* their lives, and submit to absolute power like captives? Have there been no

Jack Cades, no *Jacqueries* among nations? And though this would not justify despotism over the sound part of a nation, it would apply at least to the unsound. I do not say that despotism can *ever* be defended on general principles, but on this reasoning of Locke it can, for thus, subdued rebels are legitimate slaves.

But Locke has a salvo for this, as for all other difficulties, in the law of nature, as *he* interprets it. But we have seen, and we hope demonstrated, the wildness of the strange doctrine, which even in this politically free-thinking age seems to have no abettors,—that there is a distinction to be made among the individuals of the same nation; that the rights of a conqueror even in a just war can extend no farther than over those who actually oppose him; and that those who do not, and the children of those who *do*, are all exempt from the effects of those rights.

Those who espouse this reasoning are safe from the fears of any very lasting despotism; but Heaven forbid that such safety should depend upon the truth of such positions.

We now come to the subject of a DISSOLUTION of a government, which, he says, may be produced by two ways: 1st. Conquest from without: 2d. Commotion within.

With the latter only are we to treat.

This is brought about, he says, "when the legislative is *altered*."

Put thus nakedly, with submission, this account is

incorrect. For the legislative may alter the mode in which its power is administered, and thus create a *different or altered* legislative, and yet the government will not be dissolved. For, from his own account, when such dissolution takes place, every man returns to his independence and the exercise of his own will.

Now, suppose that from an obstinate withholding of the supplies, or by swamping the House of Lords, the House of Commons, by the disorder this would create, should force the Lords to consent to a law for their own abolition !

This would alter the legislative with a vengeance, yet the *government* would not be dissolved. We should still remain in our social state; still be governed by laws.

In 1689 the experiment was tried. The King fled; the throne was vacant; men neither summoned by the king's writ, nor elected by the people, called themselves the Lords and Commons, and created a temporary governor, who then summoned what he called a parliament, which was no such thing.

Here was an alteration in the legislative, or there never was one; yet the community stood, the laws remained, and England was England as it is at present. So much for this principle.

Locke then enumerates different causes which would occasion the dissolution of the government, being, in fact, a record of the sins of James II. against his people; and very fairly (as we have before observed) allows that the legislative as well as ex-

ecutive may incur this guilt. This, he says, "they do whenever they endeavour to destroy the property of the people, or reduce them under arbitrary power; the consequence of which is, that the power returns to the people who put it into their hands, who may resume their original liberty, and establish a new legislative."*

In respect to breaches of trust producing this dissolution of things, he goes farther than, perhaps, it would be discreet to follow him, when he says, "that to corrupt the representatives through the force, *treasures, or offices* of the society; or openly pre-engage electors, and prescribe to their choice those whom the executive has won to his designs; this cuts up the government by the roots, that is, dissolves it."†

If this be so; if bribery and corruption either of the electors or the elected, if the disposal of the treasure or offices of the society by a minister, will dissolve the government, at what moment of time was the government of England, or of any other country, ever not dissolved?

Seriously to refute this wildness would be any thing but serious; we mention it only (though with every possible respect for the writer) as the crowning vision of this visionary treatise.

* p. 378.

† p. 380.

No. VI.

Veritas obvia, sed requirentibus.

OF LORD RUSSELL AND ALGERNON SIDNEY.

Perhaps I may be forgiven if, whatever may be thought of the opinions contained in this work, I imagine it would be incomplete without some notice taken of questions which belong to the above names in themselves of the greatest importance, and which seem to have divided mankind ever since they were started.

Yet none, in the history of our jurisprudence, of our constitution, or the political conduct of former governors, are of more consequence to the settlement of our notions upon the legal rights of sovereign and subject.

From the time of the Revolution to this hour it has been customary for one great party among us to hold that the existence of the Rye House Plot itself was by no means clearly proved, and that Lord Russell, and Sidney, were martyrs, victims, sacrifices in the cause of liberty, their trials breaches of the law, their executions murders.

Of this opinion are Mr. Fox, Lord John Russell, and Mackintosh; Price, and all republicans, of course. It is in fact one of the sacred articles of the creed of Whiggism, and the act itself reversing Lord Russell's attainder does not scruple to record it as a murder.

Of the breach of the law in the case of Sidney, whatever his intentions, no one can doubt; and he was therefore, in our opinion, legally murdered. But with what justice this is so constantly asserted, nay proclaimed, by the legislature in regard to Lord Russell, we propose to inquire.

That there was a plot, denominated Rye House, from an *imputed* intention to attack and assassinate the King at that spot, (so convenient, as was said, for the design,) will not be disputed. That such a design was broached, canvassed, and more or less entertained by several persons, some of whom were also in communication with others of a higher class, on the possibility of a general insurrection, is equally to be believed.

These last were composed of various leaders of the Whigs, discontented with the government, but having no *direct* design on the person of the King. Their chief, however, was the turbulent Shaftsbury, who kept up an intercourse with both parties through agents, some of whom were among the plotters against the King's life.

Thus the two conspiracies seemed blended together, though of very different characters.

The one had assassination for its object; the other (as Mackintosh would call it,) a mere "*reformatory revolt*."

But, with these differences in the minds of the parties, that a conspiracy of a treasonable nature did exist, called by the common name of the Rye House

Plot, is clear. If this was an invention, then all history is an invention.

This is admitted by Mr. Fox and Lord John Russell themselves, and also by Hallam.

The language of the former is remarkable.

"Of the Rye House Plot," he observes, "it may be said much more truly than of the Popish, that there was in it some truth, mixed with much falsehood; and though many of the circumstances in Kealing's account are nearly as absurd and ridiculous as those in Oates's, it seems probable that there was among some of those accused, a notion of assassinating the King; but whether this notion was ever ripened into what may be called design, and, much more, whether it were ever evinced by such an overt act as the law requires for conviction, is very doubtful."*

The question is, what was the extent of the design had the attack at the Rye House taken place? Whether it formed a part of the intended general insurrection? Whether even that was ever really designed? And, above all, whether Lord Russell had any, and what share, in either of these supposed conspiracies?

Were the inquiry of a common occurrence in the history of ordinary crime, there would probably be little occasion for discussion; but being of a high political nature, involving, not only the lives of kings, but the revolution of states, and the most vital questions on the principles of government;—as the

* History of James II., p. 50.

greatest, as well as very mean names were brought into peril, and experienced consequences from it fatal to themselves, their families, and their party;—as these consequences extended themselves afterwards so as to influence the fate and condition of the whole nation;—there is scarcely an epoch or event in our history which has been so powerfully searched, or so passionately discussed, as political bias, principles, or prejudice animated the various disputants who have embarked in the contest.

One would have thought that, at this distance of time, passion, as well as self-interest, would have long subsided, and left the historian, the lawyer, or the statesman, free from all influence, but the simple love of truth, in making the inquiry. But the reasons above enumerated account for the perpetuation of the feelings which prompted the pens as well as the conduct of the original and contemporaneous champions for or against this historical problem. Lord Russell, besides having sealed his principles with his blood, has become the head, as it were, of a sect in political controversy; and, like other heads of sects, has filled his followers with an enthusiasm, both blind and ardent, not easy to be extinguished. Moreover, in addition to his party disciples, he is represented by an extensive and distinguished posterity, all of whom very naturally embalm his history in their memories; so that the question of his legal guilt or innocence continues to be agitated with almost as much fervency as ever. Not a little, too,

is contributed to this ardour, both in attack and defence, by his extreme and acknowledged religious and political bigotry on the one hand, and the merited enjoyment of as much private virtue, probity, and honour as ever existed, on the other.

Even, therefore, granting his *legal* guilt, that such a man should be cut off by the axe of the executioner, of itself engages our tenderest sympathy. But can we fail to add to this the pathetic interest, amounting to absolute veneration, inspired by the noble yet tender virtues, the conjugal yet energetic exertions, of his matchless consort. More of the interest about Lord Russell is owing to this admirable woman than perhaps we acknowledge or are aware of. To have possessed so much of her devotion, so much of her love, makes us enhance merits which were certainly mixt with many defects. When we read in her letters to him of her fondness for the pillow *on which his dear head had rested*, every man who knows the value of a virtuous woman's affection, feels his heart thrill, and in thinking of Lord Russell we think not of the indiscreet and rash patriot, but only of the happy husband.

Lord and Lady Russell in fact, from their characters and their fate, notwithstanding his faults, have become the favourites of history. His legal guilt is forgotten, even by those who blame him, in his moral probity. By those who approve him he is elevated to a pitch of almost adoration.

When he fell, therefore, his friends were struck to

the heart; and many of his opponents (I for one) would have been glad had he been spared.

Mackintosh calls him the man of most *unspotted* virtue who ever suffered on an English scaffold. If this mean in allusion to his integrity in private life, and his *sincerity* in his mistaken public conduct, probably he was so. But if, by *unspotted*, is meant, that he never intended insurrection, or that he was either just, compassionate, or wise in the political measures he pursued, it may not only be doubted, but must be strenuously resisted. He was as bigoted, and almost as indifferent to blood or real justice, in his violence against popery, as Mary against protestantism; and few but bigots, on the other side, will deem Mary *unspotted*. Of this, his public doubt of the King's power to remit the most cruel parts of the sentence against Stafford, and his whole violent conduct in the Popish Plot, are irrefragable proofs.

With all his virtues, therefore, we are not to shut our eyes to truth, if we can find it, which, I think, we can. We are not to be dazzled by a colouring which seems to be false. Above all, we are not to join in the foolish intoxication of the party cry, — "the cause for which Russell bled on the scaffold, and Hampden in the field."

Of the cause of Hampden this work has already ventured an opinion. Into the real cause and real case of Russell we will now proceed to inquire.

In doing this, it is not our intention, nor is it

necessary, to rake up the trials of the under conspirators adjudged to death for the plot against the King's life at the Rye House. Many of them died confessing the guilt of having *intended* it; but it is the less necessary to canvass the question of the participation in it by Lord Russell, Monmouth, and other leaders; because, after due consideration, I think it must be cheerfully conceded, that none of them had any share in that design. We believe the dying asseveration of Lord Russell, that such an intention was abhorrent from his nature. We, or, at least, *I*, do *not* believe him when he declares, on his trial, that he went to the meeting of his fellow leaders at Shepherd's, who conferred about the rising, and the feasibility of attacking the King's guards, "by accident;" and purely to taste wine, the landlord of the house being a wine-merchant. As little can we believe, that being of the Council of Six, which directed the treasonable communications with the Scotch malcontents at home, and with Argyle abroad, they assembled at each other's houses (his among them) merely to talk of news. However we may forgive this assertion with a view to save his life when upon his trial, (and, in so far, proving how inferior he was in heroism to Sidney,) no man who has read, not merely the trial itself, but his own account of his conduct in his petition to the King, but must be fully convinced that these declarations were untruths, and that he joined the other Whig leaders at Shepherd's, viz. Monmouth, Grey, Fergusson, and Arm-

strong, and also the Council of Six afterwards, with a view to discuss a scheme of insurrection against the government.*

In treating of this question, for the present I totally throw out of the case all that was sworn by the two witnesses most objected to on the trial, Rumsey and Lord Howard. I also *for the present* lay aside the accounts of Lord Grey, and of Sprat, so much, but not at all, I think, conclusively, oppugned by the Whig writers. I do so, not because they are *proved* to be unworthy of credit, (as Mr. Fox thinks of Lord Grey, and Lord John Russell both of him and Sprat,) but because I wish first to canvass what may be called the *moral*, not legal, guilt of Lord Russell, and confine myself therefore to what may be called moral proofs, drawn from Lord Russell's own and his friends' accounts, particularly that of Burnet, the confidant of his latest moments, and participator of his party principles.

For to treat this question methodically, it may be proper in the outset to observe, that there are two points of view in which it is to be considered. One, as to the *legal*; the other, as to the rational proof of the fact. My intention is to treat of the last, first; because the real intention forms the real guilt or innocence of Lord Russell in the eye of truth and reason, though not of law.

For if he was morally guilty of a design to control

* It was not less to discuss a scheme of insurrection against the government, that he went to dissuade Shaftsbury from the mad one he proposed.

the government by an armed force, and the law was not strained to convict, but the evidence fairly left to his jury, (to all which we shall come in due time,) there must be an end of the outcry against that government for defending itself. In that case the honour of martyrdom, and of having been sacrificed by a tyrant to his love of vengeance, must be denied him; even although his profession be believed, (as I am sure it is by me,) that he had formed no design against the life of the King.

The fact, then, of his intention, and the nature of his consequent conduct, is the real fact, after all, into which, with our views, we are first to inquire, independently of the question of law and law proofs, which, though of immense consequence as another question, (which we by no means mean to evade,) has nothing to do with the merits or demerits of Lord Russell towards the country.

In the first place, then, read his own words in his petition to the sovereign, whom he confesses he had offended; how, except by having offended against the law, it would be difficult to comprehend.

“Your petitioner does once more cast himself at your Majesty’s feet, and implores, with all humility, your mercy and pardon, still avowing that he never had the least thought against your Majesty’s life, nor any design to change the government; but humbly and sorrowfully confesses his having been present at those meetings, *which he is convinced were unlawful, and justly provoking to your Majesty; but being betrayed by ignorance and inadvertence, he did not decline them as*

he ought to have done, for which he is truly and heartily sorry; and, therefore, humbly offers himself to your Majesty, to be determined to live in any part of the world which you shall appoint, and never to meddle any more in the affairs of England, but as your Majesty shall please to command him.”

Such was the petition of this supposed injured and innocent victim; this guiltless sacrifice to the vengeance of laws which he is said never to have offended; or which, if he did offend, it was from a noble sense of duty to his oppressed country, which, to relieve, he sacrificed his life.

It is plain all this evaporates and becomes nothing from his own account, and that far from a thought of *risking* any thing for the sake of the country, much less of hazarding his life for it, he was *betrayed* into attending, or rather not declining, these patriotic meetings, by *ignorance* and *inadvertence*.

It is far from our wish to deteriorate from this honourable but mistaken man’s real merit, by pointing at, what must strike every one, how little of the hero was here mixed with the patriot; nor would a word of this humiliating document be republished but for two important considerations, which the mere truth of history, if it would be useful, absolutely requires to be impressed,—First, that he could not be the martyr to liberty who could thus humble himself before the tyrant who destroyed it, and who only showed himself on the side of his country from ignorance and inadvertence. Next, that far from asserting that he was *falsely* accused, (I speak not

here of illegality,) he owns plainly, and beyond all cavil, that he did attend *meetings* (for the word is plural) which he knew to be *unlawful*.

So far, therefore, he confesses that he had offended the law, to what extent may be otherwise ascertained; but this is a complete answer to his own assertions upon the trial, that his attendance at the consult at Shepherd's was by *accident*, to taste wine; and that the meetings of the Council of Six were merely to talk of news.

The confession in the petition does honour to his candour, but establishes his guilt, for guilt it was, whatever its amount; and must for ever silence the strange prejudice, that he went to the scaffold *innocent* and *unspotted*, however pitied.

What, therefore, shall we say to those who, knowing these facts, hold him up to this day as a man who had justly incurred no punishment, because he had committed no crime? What to Burnet, who, writing with this very confession before him, has the profligacy to say that he was convicted of treason for being present by *accident*, or for some innocent purpose, where treasonable matter was discoursed, without bearing a part in it? Both the Bishop and Lord Russell himself allow that this amounted to misprision of treason, though no more. This, if true, that he took no part, and was there by *accident*, might be allowed by the law. But the fact of its being accidental is contradicted, we shall see, by the Bishop himself, who had forgot it; and at any rate if

* Burnet, i. 554; followed by almost all the Whig writers.

there was misprision of treason, it establishes the mooted point, that something amounting to treason was actually contemplated.

What share in that contemplation Lord Russell had, independent of his attendance at Shepherd's, we will now proceed to inquire on the authority of the same right reverend partizan, who, though he could advisedly misrepresent in his favour, cannot certainly be suspected of doing so against him.

I have said that we throw out of the case, for the present at least, the obnoxious evidence of Howard and Rumsey, and also the accounts by Sprat and Lord Grey. The relation of Burnet will of course be thought a purer source of information.

Lord Shaftsbury, whose treasons are not disputed, had been in communication with Monmouth, Russell, Essex, and many others of a lower class, the latter, by the avowal of all, ripe for rebellion, and only waiting for leaders.

What sort of communication this was, may be gathered from Burnet's own words. "The Duke of Monmouth, *who understood what a rabble was, and what troops were*, looked on this,"—as what? Treason which he ought to disclose to the state? No! "*A mad exposing of themselves and of their friends! The Lords Essex and Russell were of the same mind.*"*

Now, I would rest the whole case of the moral proof of their guilt upon this simple account. Understood what a rabble was! and what troops were!! Do men usually estimate the power of rabble *against*

* Burnet, i. 537.

troops, both obeying the same King, from mere curiosity? As the troops are not even accused of any design against the rabble, the inference is plain, that the comparison was made to ascertain the chances of the rabble against the troops, and with what view cannot be doubtful.

Here, then, is incontestible proof, out of the mouth of the Whig confidant of these lords himself, that they were in confidential communication with the arch-rebel Shaftsbury, and knew of his projected treason, which, though they did not approve, they only disapproved because they were averse, not to the treason, but to "*a mad exposing of themselves and their friends.*"

So far, therefore, we have got, that to the treason itself they were friendly, provided they could get over the danger from *troops*. They were in communication with Shaftsbury about it; and, though they are represented as disapproving of his *immediate* plan, no man in his senses can believe, from this account of Burnet, that the object of this communication was to deter him from more than waiting for a better time to commence the insurrection.

In this situation the Duke of Monmouth, says Burnet, "gave an appointment to Lord Shaftsbury, or *some of his friends*, to meet him and *some others* that he should bring along with him, at Shepherd's, a wine-merchant in whom THEY had entire confidence. The night before this appointment Lord Russell came to town on account of his uncle's illness. The Duke went and told him of the appointment,

and desired he would go thither with him. He consented, the rather because he intended to taste some of that merchant's wine. At night they went with Lord Grey and Sir Thomas Armstrong. When they came they found none there but Rumsey and Fergusson, two of Lord Shaftsbury's tools that he employed; upon which, seeing no better company, they resolved immediately to go back, but Lord Russell called for a taste of the wines, and while they were bringing it him up *Rumsey* and *Armstrong* fell into a discourse of surprising the guards. Rumsey fancied it might have been easily done. Armstrong, that had commanded them, showed him his mistakes. This was no consultation," says Burnet, "of what was to be done, but only of what might *have been* done. Lord Russell spoke nothing upon the subject; but, having tasted the wines, went away."*

So far the Bishop's account, which, in justice to the case of Lord Russell, we have set forth at large, that every possible advantage may be given to it, and that every one may judge for himself of this the very utmost that can be said in its defence.

And what do we gather from it? In the first place, an incontestible proof that they had entertained, with Shaftsbury, a design to rise in arms as soon as it could be done, without "*a mad exposing of themselves or friends.*"

Next, a meeting *appointed* with Shaftsbury, or *some of his friends*, to confer upon it; and the attendance of Lord Russell at that meeting, *fully apprised*

* Burnet, i. 537.

and invited to it by the Duke of Monmouth, with whom he had *previously* been in the habit of discussing these plans of Shaftsbury. Although, therefore, they might have gone for the express purpose of dissuading him from *this particular plan*, not the less, *the premises considered*, was the purpose to discourse of treason; not the less shameful is the disingenuousness of Burnet's assertion, that the attendance was either *accidental*, or for an innocent purpose. Grant that Lord Russell came to town on his uncle's illness; grant that he went to Shepherd's *the rather* because he wanted to taste his wine; is this in the least incompatible (*the premises*, as I have said, *considered*) with the most treasonable intentions? If not, the remark is a mere blind, set up by the Bishop, easily seen through, and impossible to be believed even by himself. What should we say to that man's innocence, who, being asked to help in blowing up a house, only disapproves it, and refuses, because there may be in it a mad exposure of himself?

But Rumsey and Fergusson were tools employed by Shaftsbury!

They might be so; but whom else did they expect to meet? Was not Shaftsbury desired by Monmouth to come himself, or *send his friends*? And are tools and friends such very distinct characters, especially in party, and still more in conspiracy, that the tools are not to be used? Rumsey, at least, had been a distinguished officer; and Fergusson, however revolting, was the favoured adviser of Shaftsbury, as he afterwards became of this very Monmouth, who is

stated so to have despised him. Nay, on the evidence of Shepherd, which is not impugned like Rumsey's or Howard's, he was, on this identical occasion, the very messenger sent by *Monmouth* to ask the loan of Shepherd's house for the meeting. Shepherd, too, tells you, that he had notice *before-hand* that Rumsey and Fergusson, as well as Monmouth, Russell, Grey, and Armstrong, would be at the meeting, which, be it remembered, was appointed by Monmouth. Thus, all were there who were expected to be there, and none who were or might not be expected. Shepherd adds, he was desired by Armstrong to keep his servants out of the way, so that he served them himself. Was this indication of that "*innocent purpose*," which the Bishop talks of; or does it tally with that asserted aversion to Shaftsbury's tools which would have made Monmouth and Russell retire *immediately* had it not been for the tasting of the wines?

Then, as to the seizing the guards, the Bishop, good, easy, and ingenuous relator, would have you believe it was a mere random casual discourse, a sort of interlude, between Armstong and Rumsey, who "fell upon it" by chance, while they were bringing up Lord Russell's wine, who said nothing on the subject. But what is the testimony of the wine-merchant himself, who certainly could not have heard the conversation if it only passed while gone for the sample? Why, (I quote the words of the trial,) speaking of the whole company, he says, "the sub-

stance of their discourse was how to surprise the King's guards; and, in order to that, the Duke of Monmouth, my Lord Grey, and Sir Thomas Armstrong, as I remember, went one night to the Mews, or thereabouts, to see the King's guards; and the next time they came to my house I heard Sir Thomas say the guards were very remiss in their places, and not like soldiers; and the thing was feasible if they had strength to do it." *

This obviously points at something which had been previously done by Monmouth himself, though not by Russell, who was no soldier. But there were but two meetings at Shepherd's, and this "*next night*" mentioned must have been that when Russell was present, for by Burnet's own account it passed while he was by, though he said nothing. Let any man therefore judge, after this actual visit by the officers, Monmouth, Grey, and Armstrong, with a view to the enterprise, which *they reported as feasible had they strength for it*, whether this bears the colouring which this reverend partizan would give to it, as a mere casual conversation *fallen upon* by two individuals only, as if upon a chance subject, and while the person who deposes to this conversation was absent fetching the wine.

Upon the whole there is scarcely a word of this

* Lord Russell's trial, Shepherd's evidence; which thus completely supports Lord Grey's, who in his history tells you in detail the visit of himself, Monmouth, and Armstrong, to inspect the guards, *previous* to this meeting at Shepherd's. (History of the Rye House Plot.)

defence of Lord Russell, (defence against the charge of having been engaged in a treasonable design, and cognizant of such a design in others, his colleagues,) that can bear the touchstone of common sense, or is not refuted by itself. From its own showing it is false that the attendance at Shepherd's was accidental; it is false that its purpose was innocent; it is false that the business discussed was new and unexpected; and if Shepherd's evidence, which is not broken into, is considered, it is false that the presence of Ferguson could be unknown to Monmouth, who had sent him to announce the meeting. But it is particularly false that the subject of seizing the guards was confined to the two persons mentioned, fallen upon by chance in the absence of Shepherd, and not connected with the very purpose of the discussion.*

That Lord Russell spoke nothing "*on the point*," by no means proves that he was not cognizant of it; and, considering the object of the conclave, that he did not entertain it. He himself allows that he heard it: he does not say he opposed, though he affirms he disapproved it. If he did so, he confined it to his own breast; he confesses that he concealed it.†

* It was probably one of the plans of Shaftsbury which they had denominated "a mad exposing of themselves," though here Monmouth, who had found the guards remiss, did not seem to think so.

† "It is, I know, inferred from hence, and pressed to me, that I was acquainted with these heats and ill designs, and did not discover them. But these would be but misprision of treason at most."—(Lord Russell's paper delivered to the sheriff). We doubt exceedingly, considering the preliminaries, this law of Lord Russell.

Upon the whole, the looseness, credulity, and blindness (I had almost said the wilful blindness) of the Bishop, never evinced themselves so palpably as in this most lame and impotent account.

Pursue it: it will be found all of the same character; and this very defence of Lord Russell sinks him for ever under the weight of truth, however his crime is sought to be disguised.

That crime, again recollect, is not, in aiming in his own person at the death of the King; but concurring and being instrumental to raise insurrection; which, though he did not intend, might possibly end in it.

Even Mr. Fox allows "that in regard to the *conspirators* (he is forced to use the word) of a higher rank, there is unquestionably reason to believe that they had *often* met and consulted, as well for the purpose of ascertaining the *means they actually possessed*, as for that of devising others for delivering their country from the dreadful servitude into which it had fallen; and thus far, their conduct appears clearly to have been laudable."*

By "means they actually possessed," we suppose Mr. Fox here intends peaceable means. High as he carries the right of the subject in abstract theory, he cannot by this intend an armed insurrection *as laudable, and warranted by the law*. If he does, he may quite as well defend the killing of the King, which is a part of an armed insurrection, or it is nothing.

* History of James II., 50.

If he does not, we shall see that Lord Russell is far from being covered by the shield he throws over him.

At the same time, "*means actually possessed*," and "*devising others*," are words so ambiguous, that they scarcely, certainly not exclusively, express *legal* means.

After the meeting at Shepherd's, which was about October 1682, Lord Shaftsbury, from both fear, and disgust at his allies failing to come up to his views, (not, as we have seen, that they were unwilling from principle, but because it was "a mad exposing of themselves,") fled to Holland, where he died. "He had, however," says Burnet, "one meeting with the Earls of Essex and Salisbury before he went out of England. Fear, anger, and disappointment had wrought so much upon him, that Lord Essex told me he was much broken in his thoughts. His notions were wild and impracticable, and he was glad he was gone out of England; but said he had done them already *a great deal of mischief*, and would have done more if he had stayed."*

No doubt he had; for, by what they all confess, (Russell and Burnet among them, and eminently Essex himself, from this very passage,) he had involved them, if not in positive treason, yet in that traitorous misprision of it which amounts to a capital offence, and, in fact, is high treason itself. †

* Burnet, i. 537.

† "If there be any probable circumstances of assent, as if one goes to a treasonable meeting, knowing beforehand that a conspiracy is intended

Being, then, thus compromised, what, according to the same historian, do these lords do? Do they repent, or reveal their traitorous meetings, or Shaftsbury's actual treason? No! that would be too much to expect. But do they abandon their own designs? We shall see.

"At *first*," says Burnet, "the lords, and all the chief men of the party, (of course Russell and Essex among them,) saw their danger, from forward sheriffs, willing juries, mercenary judges, and bold witnesses. So they resolved to go home and be silent, to speak and to meddle as little as might be in public business; and to let the present *ill temper* the nation was fallen into wear out."

So, then, according to the Bishop, not to rise against the King in arms, was ill temper in the nation! But not to mention that the national feeling was here *confessedly* against them, and, therefore, denominated *ill temper*, it will be curious to observe the reason assigned, as follows, for this temporary quiescence.

"For they did not doubt but the court, especially as it was now managed by the Duke, would soon bring the nation again to its wits, by their ill conduct and proceedings."*

against the king; or being in such company *once by accident*, and having heard such treasonable conspiracy, meets the same company again, and hears more of it, but conceals it; this is an implied assent in law, and makes the concealer guilty of actual high treason." (Blackstone's Comment. iv. 120, under Misprision of Treason.)

* Burnet, i. 558.

Such was their thought. May we not say, their "*wish* was father" to it?

We, here at least, see in Burnet, an exemplification of the character of a thoroughgoing, theoretical, or ambitious reformer. He is angry if a nation dare to be contented against his permission or principles; and if they are too satisfied to join him, lies by in ambuscade, praying for the happy moment when they may change their satisfaction for discontent. We have already pointed out that even Lord John Russell (of course interested for his ancestor's reputation) allows that the temper and even the grievances of the nation * did not then justify insurrection.

But to proceed: what conduct did these lords, discontented with the nation's content, pursue to prove their resolution to be quiet? They secretly plotted preparations for an insurrection as soon as their *hopes* of a change from this ill temper should be realized, and happier times be riper for revolt. Happy had they waited longer.

In proof of this I would rather give the Whig historian's words, in his narrative of their practices, than convey a mere opinion of my own.

"The Duke of Monmouth," he observes, "resolved to be advised chiefly by Lord Essex. *He* would not be alone in that, but named Lord Russell, against whom no objection could lie†; and next to him *he*

* Supra.

† This loose mode of expression, though only characteristic of the

named Algernon Sidney*, a man of most extraordinary courage, &c. He (Sidney) prevailed on Lord Essex to take Lord Howard into their *secrets*, though Lord Essex had expressed such an ill opinion of him a little before to me, as to say that he wondered how any man would trust himself alone with him. Lord Russell had the same ill opinion of him; yet Sidney overcame both their aversions. Hampden, also, was taken into their *secret*."†

It is obvious, then, that there was a secret; and what it was the Bishop goes on to explain.

It is obvious these men were the Council of Six, and "with these," says Burnet, "the Duke of Monmouth *met often*."‡ He also, from his connection and influence with Scotland, "met often with Lord Argyle while he was in London, and had many conferences with him on the state of that kingdom, and of what might be done there." Here the reader need not be reminded that Argyle was, justly, the determined enemy of the government, and watching every opportunity to avenge the wrongs he had suffered; wrongs, however, which the Duke and the other lords had never experienced. "What might be done there," (in Scotland) needs, therefore, no interpretation.

writer, we do not understand. Does he mean that Essex named him, or the Duke? and against whom does he mean that any objection *did* lie?

* Qy. *Who* named? but no matter.

† Burnet, i. 539. The above account is abridged, but not as to any fact.

‡ Lord Russell said they met but *twice*. The Bishop, his friend, therefore contradicts him.

But that it may be the less necessary, Burnet adds, that they assumed a mask to disguise their designs. "And he (the Duke) thought the business of Carolina was a very proper *blind* to bring up some of the Scotch gentlemen, *under the appearance of treating about that*.* So, upon this, they agreed to send one Aaron Smith to Scotland, to desire that some men of *absolute confidence* might be sent up for that end."

We pause here for a moment, to say that this again confirms the testimony of Grey and Howard, who, though they might be villains, might also speak truth.

"In the beginning of April (1683)," proceeds the Bishop, "some of them came up. The person that was most entirely trusted, and to whom the journey proved fatal, was Baillie (of Jervoisewood). † I went to him in great simplicity of heart, thinking of nothing but Carolina. But in a few weeks I found they came not to me as they were wont to do, *and I heard they were very often with Lord Russell*. I was apprehensive of this, and Lord Essex being in the country, went to him to warn him of the danger I

* A great colony of Presbyterians in Carolina was very much patronised about that time by Shaftsbury, and became what was called the *cant* by which he and his associates disguised their operations.

† He was a great man, and a patriot, and the cruelties and oppression exercised upon his country justified all he did, or could do, to obtain security for her. He was also shamefully betrayed by his associates, and suffered death in the cause. But the cause of Scotland was not that of Lord Russell; nor if it had been, does it alter the view of the question, which, be it always recollected, is not whether England could justify an insurrection, but whether Lord Russell had been guilty of intending one?

feared Lord Russell might be brought into by this conversation with my countrymen."

Why was this fear? The answer is plain. His countrymen were traitors in the eye of the law.

Essex seems to have discountenanced this interference, and with reason, for he was as much involved as Russell, and afterwards, as we shall find from this history*, confessed to his wife that the allegations against him were true, which occasioned his self-murder in the Tower. He assured Burnet he need not fear Lord Russell, who would do nothing without him (which was true, for both were equally embarked). He (Essex) agreed, too, "that things were not yet ripe enough, and that an ill-laid and ill-managed rising would be our ruin."† Again, then, we see that their whole mind was bent upon a rising, though this might be premature; and how Lord Russell (man of truth, as I believe he was,) could represent these meetings as merely to talk of news, except, indeed, as a blind to his jury, no one can explain.

That Essex, however, on this occasion, was merely parrying Burnet's officiousness, is plain; for at that time the Council of Six, from the Bishop's own account, had become thoroughly involved with their Scotch allies, the men of *absolute confidence*.

"What passed," says the Bishop, "between the Scotch and the English lords I know not, only that Lord Argyle, who was then in Holland, asked, at first, 20,000*l.* for buying a stock of arms and ammu-

* Burnet, i. 552.

† Id. i. 541.

nition, which he afterwards brought down to 8,000*l.*, and a thousand horse to be sent into Scotland. Upon which he undertook to conduct that matter. I know no farther than general hints of their matters."*

This is more than usually candid of this reverend politician; but farther, I think, it is not necessary to know; for if this intercourse with Argyle and the Scots, whom they themselves had sent for, was not treason in the Council of Six, and, therefore, of Lord Russell, there never was a traitor.

Here, however, we may refer to the confession of Carstairs, one of the Scotch agents, made, indeed, in fear of torture, but nowhere contradicted, forming the evidence against Baillie, and preserved among the documents in Sprat.† Let any man read that confession, and doubt, for a moment, Lord Russell's *treasonable* correspondence with Argyle.‡ "Having acquainted Sir John Cochrane," says Carstairs, "with the Earl's demands of 30,000*l.* sterling, and 1,000 horse and dragoons, Sir John carried him to the Lord Russell, to whom the deponent proposed the affair, but being an absolute stranger to the deponent, had no return from him at *that time*; but afterwards, having met him accidentally at Mr. Shepherd's house, where the Lord Russell had come to speak to Shepherd about the money above mentioned,

* Burnet, i. 541.

† History of the Rye House Plot.

‡ i. 541. Will Mr. Fox, or Lord John, any lawyer, or any man of sound mind, say here was no treason intended, because the proposal was not adopted.

as Mr. Shepherd told the deponent, the deponent, when they had done speaking, desired to speak to the Lord Russell, which the Lord Russell did; and having reiterated the former proposition for the 30,000*l.* sterling, and the 1,000 horse and dragoons, he, the Lord Russell, told the deponent they could not get so much raised at the time, but if they had 10,000*l.* to begin, *that would draw people in*, and when *they were once in they would soon be brought to more*; but as for the 1,000 horse and dragoons he could say nothing at present, for that behoved to be concerted on the borders.”*

After this, what are we to think of the blindness of *party* historians, men of truth and honour, though they be,—Mr. Fox, Lord John Russell, and Sir James,—in breathing a doubt of the *proved* guilt of Lord Russell; I speak not here of the trial at law, but in foro conscientiae. How, after this, can Mackintosh gravely adopt Lady Russell’s representation, that it went no farther than talk.

To return to Burnet: he goes on to say, that Hampden offered to give him all particulars; but this the wily priest, with the penalties of misprision fully before his eyes, prudently refused. “I told him,” says he, “*that till by an indemnity the whole matter was buried, I would know none of those secrets, which I might be obliged to reveal, or to lie and deny my knowledge of them.*” He adds, however,

* Carstair’s Deposition, apud Sprat, 119, and Trial of Baillie of Jervoisewood.

that he knows no money was raised; but the thing got some vent in Scotland, which was let out by some of their teachers.*

To conclude this account of the Council of Six, we have to add, on the same authority, that when the Rye House Plot for the assassination of the King had got wind, and there were universal suspicions and arrests of all whose names were implicated, whether in that particular plot or not, Baillie and the two Campbells, who came to confer with the Council of Six, were seized in London, and examined by the King himself, and being questioned about the design against his person, denied all knowledge of it. But being asked “if they had been in any consultations with lords or others in England, *in order to an insurrection in Scotland*, Baillie faltered at this, *for his conscience restrained him from lying.*”†

I know not what additional support this opinion of the existence of the plot will receive from it; but we here may recollect what Mackintosh relates, (and at least does not refute,) on Montague’s authority, that King William was aware of it. ‡

We finish this part of the story with the account of the melancholy and honourable, but too conscious Essex. Being brought before the council he was “in much confusion;” and when sent to the Tower “fell under a great depression of spirit.” He sent a very melancholy message to his wife, *that what he was charged with was true; he was “sorry that he had ruined*

* Burnet, i. 541.

† Id. p. 552.

‡ Supra.

her and her children." He afterwards, indeed, denied his guilt to his brother in law, Lord Clarendon, but this he did by desire of his wife to reveal nothing till she had seen him.* That never happened, for his unhappy and well known catastrophe by self-murder, put an end to all farther investigation.

Can we wind up this account of the Council of Six without touching on the confession of their guilt by Monmouth and Hampden. The latter, to save his life, when Grey, taken in Monmouth's invasion, was prepared to testify against him, pleaded guilty and craved mercy. But this he did, says Burnet, "in a manner so mean and humiliating, that it gave his spirits a depression and disorder which he never could quite master, and had a terrible conclusion, for about ten years after, he cut his throat."

With regard to Monmouth's confession, after the other proofs which have been adduced of the guilt of himself and colleagues, it becomes a mere matter of curiosity, nor is it of the smallest consequence to know whether, or what he confessed. But Mr. Fox has affixed the authority of his name to an opinion that "when we reflect upon all the circumstances of his communications with the King, they deserve not the smallest attention." This, like many other opinions of Mr. Fox on the transactions of these times, which we have noticed, seems adopted without due care, or at least without due fairness, evidently the result of the bias of his mind, rather than the impartial judgment of a sober

* Burnet, i. 552

historian. He has not even vouchsafed to give his reader any light whatever as to any one of those circumstances which he says render the communications of Monmouth "unworthy the smallest attention." It may not, therefore, be foreign to the object of this inquiry to examine what warrant there is for this confident assertion.

Here, again, shall we do wrong on looking for the history of the facts in the same historian, whom, for his total absence from all inclination towards the court, we select as the best support of our opinions on the conduct of Lord Russell and this very Duke of Monmouth. This reference, with others, at least as little prejudiced against Monmouth, will enable the reader to judge for himself.

From Burnet's account, then, Halifax, to serve himself, wishing to make Monmouth a balance against the power of the Duke of York, induced the King, who still "*passionately* loved him," to promise him forgiveness and restoration to favour on his making confession of the share he had in the conspiracy. "Upon which he consented to satisfy the King;" and, "as was agreed, made a humble confession of his offences in *general words*." These words are not given; but the next day the King said he had confirmed all that Howard had sworn. This was carried to the Duke, who denied it, adding, "that Lord Howard was a liar and a rogue." Liar and rogue as he might be, the conspirators on their trials upheld his truth when they thought it told for them; that

is, when *at first* he asserted, (though one of the Council of Six,) that there was no plot. Whether that council were innocent, after what has been stated, the reader may judge.

The next Gazette, however, mentioned, "that the King had pardoned him on confessing the *late plot*." "Plot," as Lord Halifax himself said, to comfort him, "might signify as much, or as little, as a man pleased;" but it cannot be denied that it, at least where the state is concerned, means something against that state, though not *necessarily* high treason. This is left to every man's judgment, who ponders what has gone before.

However this may be, *after* Monmouth's pardon had passed, so that he had no personal fear to influence him, Halifax, telling him they had had dangerous consultations, (which, indeed, is no more than what Russell himself had confessed,)* "got him to write a letter to *that purpose*, which he carried to the King, and *the King was satisfied*." Could he have been satisfied, after Monmouth had so flatly denied his public assertion, unless he had retracted the denial?

That he had retracted that denial, and revealed his own guilt, and that of his associates, is pretty clear, from the agony with which he was immediately seized; "*an agony*," says Burnet, "*like despair*," which made him demand his letter back again. This was granted, and he was immediately forbidden the court.†

* Supra.

† Burnet, i. 575.

So far the Bishop; and even from him, I confess, I see no warranty for the sweeping assertion of Mr. Fox, that these communications of Monmouth deserve not the smallest attention. Coupled with all the preceding narrative of the transactions of the Council of Six, they deserve *every* attention; nor would it be easy for the most blunt understanding to refuse its assent to the proposition, that, from this mere showing of Burnet alone, the guilt of a conspiracy (*that* with Scotland, at least,) had been confessed by Monmouth.

What shall we say, then, when we turn to other authorities, and fuller accounts, as we now think it right to do, particularly that of Sprat, which probably would be thought by Mr. Fox to be equally unworthy of attention? Where he sets forth *proofs*, however, and not opinions, Mr. Fox will not deny his veracity. From his, and other authorities, still less questionable, because drawn from actual letters, journals, and written documents, I find the real case of Monmouth's confession so clearly elucidated by Lingard, that I venture to transcribe much of his account, and the evidence he vouches for it.

In Monmouth's first letter to his father he confined his protestations of innocence to the charge of an intent to murder. Of this, indeed, those who actually confessed that charge, and even the most adverse of the witnesses against him, acquit him. We have, in truth, already and cheerfully acknowledged that that charge could only be founded on

legal consequences, and not on a positive actual intention, whether in him, or Lord Russell, or Sidney himself. But, by confining his protestations of innocence to this charge, the inference of Lingard is no more than sound, that he tacitly acknowledged the design of exciting insurrection, which, be it remembered, was emphatically insisted upon on the trials both of Russell and Sidney.

In a second letter, quoted by Sprat, Monmouth begged he might be spared the ignominy of a prison and a trial, and requested advice how he might best implore the forgiveness of the Duke of York, "which he would do as an outward form, but with all the sincerity in the world."* Why this, if there was no conspiracy?

Upon this he was introduced to the two brothers, and on his knees confessed and condemned, though innocent of any design against the royal life, *the part which he had taken in the disloyal plans and practices of the conspirators*. The detail of this, taken in writing by James at the time it occurred, is too remarkable not to be set forth.

"He first threw himself at his Majesty's feet, acknowledging his guilt, and the share he had in the conspiracy, and asked his pardon: then confessed himself faulty to the Duke, asked his pardon also; assured him, if he should survive his Majesty, that he would pay him all the duty that became a loyal subject, and be the first should draw his sword for

* Sprat, 189.

him, should there be occasion.* He then desired his Majesty would not oblige him to be a witness; and then gave an account of the whole conspiracy, naming all those concerned in it, which were more than those who had already been mentioned by the several witnesses."†

So far James's memorandum. Other authorities, in greater detail, say, with the King, that he confirmed the truth of Lord Howard's testimony, with the exception of one unimportant particular; named the chief persons on whom the conspirators depended in Cheshire, Yorkshire, and the West; and unfolded the designs of Argyle in Scotland.‡

What the King said, then, was true, and he *did* confirm what Howard had sworn.

Yet after this, having first waited till his pardon past, and fearing infamy, he denied it,

This falsehood excited the anger of his father, who, at the suggestion of Ormond, required from him a written contradiction of the report of the denial. He obeyed, but his letter was deemed evasive, and Charles gave him another form, written by himself. This

* This was in Nov. 1683. How well he kept his promise, when less than two years after he undertook his silly and wicked invasion of him, disputing his title to the crown, may be remembered. In truth Monmouth is the poorest character in history; yet being the enemy of James, Fox does what he can to whitewash him.

† Sprat, 136.

‡ Sprat, 136. Life of James, i. 742. James's Letter to Prince of Orange, 27th Nov., in Dalrymple, Appendix 53, and Reresby 168: All, apud Lingard, xiii. 350.

having copied and returned to the King, though with many a pang, is absolutely conclusive; and how Mr. Fox can say it is undeserving the smallest attention, he only can explain. The letter will speak for itself.

"I have heard some reports of me, *as if I should have lessened the late plot, and gone about to discredit the evidence given against those who have died by justice.*" From this, then, it appears that he did not mean to lessen the plot, or discredit the evidence. But again: "Your Majesty and the Duke know how ingenuously *I have owned the late conspiracy*; and though I was not conscious of any design against your Majesty's life, yet I lament having had so great a share in *the other part of the said conspiracy.* Sir, I have taken the liberty to put this in writing for my own vindication, and I beseech you to look forward and endeavour to forget the faults you have forgiven me. I will take care never to commit any more against you, or come within the danger of being again misled from my duty, but make it the business of my life to deserve the pardon your Majesty hath granted to your dutiful

MONMOUTH."*

Now here, it may be said, there are no particulars, and, what is more, that the letter is the dictation of the King.

As to the first, let those who have read all the trials, and Hampden's confession, deny, if it be possible, whatever glosses are put upon it by Mr. Fox,

* Sprat, 141.

Lord John, or Sir James, that there had been no treason, whether legal or moral, not merely in contemplation, but in positive overt acts.

As to the last, that any difference can be made between signing at the dictation of another, and signing of one's own accord,—not only is the subterfuge a mean one, but the proof is enhanced by it. Nothing short of the most overwhelming self-conviction could induce a man of the commonest spirit to stoop to such degradation, if the fact confessed, though at another's dictation, was not true.

The reproaches of his friends, however, particularly of Hampden, who called this letter his death warrant, occasioned on the part of Monmouth the agony before mentioned, and the recall of this important document; as if the recall could alter the fact. Forbidden the court, and retired to the country, this very weak and foolish person, at the advice or entreaty of his duchess, now offered to recall his recall, retrace his steps, and sign a similar paper: but it was too late, and Charles rejected the proposal.*

Are these light circumstances? Are the communications nothing? Were the confessions inventions, to save his own life, by sacrificing his associates? That could not be, because the pardon had passed before this critical letter had been sent. Is this, then, what Mr. Fox means, by saying it deserved not the smallest attention? Perhaps Lord John Russell thought so too; for, remarkable as the communications were,

* See all the authorities for this, apud Lingard, xiii. 351, 352.

and bearing so pointedly upon the question of the conspiracy, though not of the assassination, he passes them over (perhaps wisely, for they pinch hard,) with this meagre notice: "The Duke of Monmouth was persuaded by Lord Halifax to make his confession. He did this in a *letter*, in very general terms; but being told that he might hurt Mr. Hampden, and others of his friends, he went to the King, and desired to have it back. The King gave him his letter, but accompanied it with some severe expressions, and forbade him the court." And this is all that is said upon this most important and detailed disclosure of the most remarkable event of the times, by the writer professedly the most interested in its history, in defence of an ancestor, upon whose real conduct in the cause depends much of the fame and consequence of his family.

The confession, general as it was, is made particular, by being at least a groundwork for all those details of evidence given in the various trials; evidence to discredit which we see is disclaimed in the very first lines of it; and, if we might be forgiven the liberty of the observation, Lord John should have therefore ransacked the world for every document in existence respecting it, before he dismissed it with so poor and hungry an account.

I do not mean by this, that it is possible to suppose an honourable person like Lord John, in professing to state an historical fact of such importance, could *mean* to suppress any part of it; but, after what

has been detailed, let any one say, whether he, or Mr. Fox, have, in what they have said of these important passages, fulfilled the whole duty of historians, — that is, not only not to hazard falsehood, but severely to examine truth. The alternative seems, (strange to say,) that neither of them could be aware of the extent of the authorities for this confession; or aware, have repudiated them.

This, indeed, in regard to some of them, Lord John has attempted; whether with success, the world must judge. It is, however, not a little remarkable, that the *two* authorities which he has selected for repudiation, are precisely those that most cogently support the confession of Monmouth, and bear hardest upon the case of Russell.

These are Lord Grey, and Sprat, Bishop of Rochester. "In the examination which I have made," says Lord John, "into the truth of the Rye House Plot, I have placed no reliance on the authorities of Lord Grey and Bishop Sprat." To be sure he would not!

As an advocate, like other advocates, bound to do the best for his client, and therefore to keep out of sight every thing that may condemn him, Lord John was no more than wise in this. As an historian, the wisdom, as well as the duty, of it may be questionable. He should at least have allowed his reader to examine the case as well as himself.

Of Bishop Sprat, he says, he "wrote, at the desire of Charles and James, a history of the Rye House Plot;

but after the Revolution he published two *exculpatory* letters to Lord Dorset, in which he says, James, after his accession, called for his papers; and having read them, and *altered* divers passages, caused them to be published by his own authority. Sprat also," adds Lord John, "*retracts* all that he had insinuated against Lord Russell's veracity. His authority must, *of course*, be equally disregarded with that of Lord Grey."*

To Lord Grey we shall presently come. Meantime, this is a very easy way of getting rid of a troublesome authority. But, with submission, much more ought to have been done by Lord John, who was well qualified to do it, before an unbiassed reader would be prepared to follow him. In the first place, it was due to Sprat to set forth these *exculpatory* letters to Lord Dorset at large, in order that the world might judge what was incontrovertible fact as to his delinquency; what mere opinion on the part of the naturally partial author. Not one word of these letters is set forth, except that James made some alterations in the papers, and then published them by his own authority; which might be explained, had the context been given.

What was the bitter and just complaint of Sidney, but that garbled extracts from his papers were given, though Jeffries offered to read what he pleased? Is Lord John less just than Jeffries?

The letters, however, are extant; and, for one, I

* Life of Russell, li. 173, 174.

am far from coming to the conclusion, which Lord John evidently surmises, that either Sprat, or King James, recorded something wilfully false, or for which there was not sufficient warranty. With regard to King James, — covered as he is with abuse, — plunged from head to foot in error, — indefensible, arbitrary, hateful, bigoted, dark, unmerciful, — his bitterest enemies allow him honesty. In fact, with the exception of the foul and cowardly calumny as to the birth of his son, no one has ever attacked his veracity. On the contrary, even Mackintosh allows it as his almost only virtue; and, bold as it may appear to say so, in this virtue, as far as *undeviating* uniformity was concerned, he was not equalled by Lord Russell.

In this, however, I allude solely to Lord Russell's account of his own conduct on his trial. As to the meeting at Shepherd's he said, "I know little of the matter, *for it was the greatest accident in the world* I was there; and when I saw that company was there, I would have gone again."

I came there *accidentally* to speak to Mr. Shepherd.

Now, by his own after-confession, he *knew*, as we have seen, that company was to be there, and went expressly to meet them, though the rather because he also wanted to taste wine.*

Aware, therefore, that this was not so, and might appear disingenuous, he endeavours to explain it in

* State Trials, vi. 714.

his paper to the sheriffs, at his execution, wherein he he says, "I never said that was my *only* reason."

This, if I may use such expressions to such a man, was an equivocation. For though he did not say it, he evidently meant, and wished it to be so inferred.

Again, in regard to the Council of Six, whose communication with the Scotch malcontents, with a view to insurrection, is now incontrovertibly established, and Howard's testimony therefore supported, he said that the meeting was "only to talk of news, and talk of things in general."*

Now, we do not say that when a man is accused and tried for his life it is a proof of moral turpitude and general disregard of truth to give false glosses to his conduct. "*Dolus an Virtus*" in an enemy are the same; and Lord Russell being the enemy of the government, he might think he had a right to deceive the jury to preserve his life. But then why not avow it afterwards, when he professed to detail the exact truth, and all hope of escaping was over? The attempt to reconcile the subterfuge with truth, by observing that he never said that to taste wine was his *only* reason for being at Shepherd's, derogates from his probity, certainly from his heroism.

When on the scaffold, also, he denied all knowledge of the plot, not merely against the King's life, but the government: "an untruth," says Macpherson,

* State Trials, vi. 720. This is admirably supported by what we have extracted above from Carstairs's confession.

"too palpable to have been uttered by a man deemed even by his enemies sincere;" and therefore he doubts charitably that the speech attributed to him was genuine. What seems insuperable now, as to his attempt to deceive the jury, the government, and, perhaps, the world, was the incredible assertion,—incredible after all that has been detailed as to the connection with Argyle, and his demands of money, arms, and horse for the purpose of invading Scotland; (for which I again refer to Carstairs's examination)—that he "never desired any thing to be redressed but in a parliamentary and legal way."*

Did either Sprat or James, then, as Lord John insinuates, falsify, or even misrepresent any one thing? I would say, no; but that the Bishop confesses that he was guilty of favouring the actors in the plot more, much more, than the numerous authentic documents placed before him from the Paper Office fairly warranted.

His words are remarkable. After complaining that some noble and eminent persons, whose friends or kindred were unhappily concerned, had entertained a prejudice against him, he says, "to them I

* "I was always for the government. I never desired any thing to be redressed but in a parliamentary and legal way. I have always been against all innovations and all irregularities whatsoever." (Trial of Lord Russell.)

After this, is Sprat to be rejected as an authority, because he questioned the veracity of a man who so prevaricated, even though he might afterwards have changed his opinion as to his general probity? But every allowance in such a cause is to be made for Lord John.

shall make this equitable request, that they would suspend any farther censure of me for what I *did* write till they shall be fairly informed how much there is that I have *not* written."

He then says, that, though allowed to consult the Paper Office and council books, whence he was plentifully furnished with such authentic materials, either of papers printed by authority, or of sworn depositions and confessions, as have been always thought the best ground for an historian to work upon, yet he was more than twelve months before he could be brought to put pen to paper. Why? Because of his natural aversion to any business that might reflect severely upon any man. "My own inclination," says he, "farther leading me to the other extreme; that is, rather to commend too much what in the least seems well done, than to aggravate what is ill done by others." He adds, "during composing those collections I earnestly requested King Charles, that few or no names of persons should be mentioned, whatever probable suggestions might be against them, but only such upon whom public judgment had passed, which it could be to no purpose for me to conceal. I could, indeed, have wished that my Lord Russell's and some other names of persons of honour might have been of the number to be omitted, but it was none of my fault that they were not; I could not hinder, nor did I in the least contribute, to their fall; nay, I lamented it, especially my Lord Russell's, after I was fully convinced,

by discourse with the Reverend Dean of Canterbury, of that noble gentleman's great probity and constant abhorrence of falsehood; but that was a good while after."*

We suppose the last cited is the passage in which Lord John states, that the Bishop retracted (as he calls it) all that he had insinuated against Lord Russell's veracity.

This is by no means a just conclusion.

As to the authority, one might appeal to the whole of the above extract to show that if it is to be disregarded, it is when he favours Lord Russell, not when he inculpates him; and with regard to the retraction, (as it is called,) what does it amount to? That, in common with every impartial man who compared then, or compares now, what he himself said upon his trial, with his avowal afterwards to the sheriffs, and with the confessions of his colleagues, Monmouth and others, he noticed discrepancies between the two accounts, which did not leave his reputation unblemished, but which were balanced by his general love of truth, supported, *though a good while after*, by the authority of Tillotson. Now, if Sprat's insinuation against Lord Russell's veracity was founded upon the untruth proved by himself by what he said upon his trial, how does a better opinion of his general

* Letter to Lord Dorset, apud. Biog. Britt., article Sprat.

And this is the *exculpatory* letter relied upon by Lord John, to show that what he said against Lord Russell was such defamation, that his authority must be rejected. If rejected, it is clear it must be for veiling the guilt of Lord Russell, not exaggerating it.

probity and of his abhorrence of falsehood, generated *a long while after* by Tillotson's assurances, prove a retractation of this specific accusation? Even if these very general words of Sprat did amount to such a retractation, will that piece of candour (for it is not less) vitiate a whole work, or destroy our belief in the specific documents, copied from originals in existence at the time? If Lord John would beat down the authority of these, and really convict Sprat of forgery, or even of incorrectness, he would have consulted justice and his own object better by himself applying to the books and papers which the Bishop cites, than by this short, sweeping, and convenient condemnation.*

Then as to the alterations by James: was a syllable breathed against their honesty? on the contrary, from the sort of pious fraud which Sprat admits he practised in softening, not aggravating, guilt, the reason of the thing, added to James's own character for truth, would induce us to suppose that he only fairly corrected what the Bishop more than hints he unfairly suppressed.

For King Charles, says the Bishop, "having granted my desire of concealing certain names, according to this allowance I proceeded, leaving out some, and abbreviating others; endeavouring all

* Monmouth's letters, as we have seen, are set forth by Sprat. Does Lord John, after *searching*, say there are not, and never were, such letters, and that it is clear he forged them, because he changed his opinion of Lord Russell's veracity?

along to spare parties and families, and particular persons, as much as would be allowed. All which would be demonstrated from the copies of the depositions as they went out of my hands, where there were several names marked by my own hand to be left out in the publication. So that if some indifferent man should now compare the informations as they are in print with the originals in the Secretary's or Paper Office, he would, it may be, be apter to suspect me of *connivance*, than of *calumny*, on that side."*

Such then, again, is the *exculpatory* letter which is supposed so to invalidate the History of the Rye House Plot as to destroy its authority against the actors of it; whereas every line shows, that, whatever deficiency in point of truth may belong to that history, it is a deficiency in *favour* of the conspirators, not against them; by the author's own account, *connivance*, not *calumny*.

There is not the same demonstrably fair objection to a similar condemnation pronounced by Lord John on the narrative of Lord Grey. Sprat had forfeited nothing, certainly not a life, when he wrote his history, and therefore wrote not to save it, if Lord Grey did so. I put it hypothetically, because we have no proof (Lord John has not vouchsafed any) that this was a *condition* of the pardon of Lord Grey.

But Grey was stained with the private vices "of licentiousness, cowardice, falsehood, and ingrati-

* Letter to Lord Dorset, ap. Biog. Britt. art. Spratt.

tude. The seduction of his wife's sister was aggravated by duplicity to her parents, and barbarity to her." *

We do not defend Lord Grey. We think him a base and sensual man; but we do not necessarily, on that account, believe his evidence incredible when supported by so many other testimonies: and if he was false in his known nature, how came he to be of the Council of Six; or Monmouth to be so linked with him after he knew his falsehood? Grant his vices, even after his history, did they, or the damning sin of that history itself, prevent the Whigs from taking him to their bosom? He was created Earl of Tankerville by King William, spite of his supposed false testimony against Lord Russell, whose martyrdom professedly procured a dukedom for his family from the same Whig King. He was also placed in high trust by the party he is supposed thus to have so falsely betrayed, as to have destroyed, in Lord John's mind, the authority of his history. He was a Lord of the Treasury, and died Privy Seal. Do these circumstances weigh nothing to prove that his party, though they might be hurt by his narrative, could not *quite* believe it was false? Even Lord John

forced to confess that "the story is well told, and probably has a *great mixture of truth*; but as it is impossible to separate the true from the false, it is better to neglect it altogether." †

* Life of Lord Russell.

† Id. ii. 173.

This is an excellent and commodious way of getting rid of an inconvenient witness! But why neglect it altogether? Why not attempt to sift the truth from the falsehood, as I am doing now? But better it certainly is for the descendant and defender of Lord Russell, on whom the truth thus *greatly mixed* up in the narrative presses so hard. The noble Lord is too well experienced in books and forensic discussions for us to point out to him that if the authority of all books, particularly on political, and, above all, on party questions, in which some falsehood is mixed with much truth, were to be rejected, our libraries would be stript, and the labour of study shortened, if not completely spared.

What would become of almost all history? What of most of the Whig resolutions of the House of Commons in the time of Charles II., in which Lord Russell himself took so violent a part? What of the reports on the Popish Plot? And, in particular, what of the gossiping Burnet? * Should this maxim of Lord John prevail, that where there is truth and falsehood mixed, both should be rejected.

Thus much, then, for the confessions of Monmouth in regard to the reality of the Rye House Plot; by which expression I always mean the design of rising in arms, to produce by force an alteration in the measures of government, which goes by that name, and not necessarily (though not excluding it)

* Lord Dartmouth used to call his History the *Bishop's Story Book*.

the separate, or, if I may so call it, the insulated design of assassinating the King. Such a rising would be undoubted treason if carried into effect: and to the question, whether only to intend it, is an overt act designing the King's death, in other words, the question of *constructive* treason, we shall presently come. But the fact of the contemplation of such a rising is, at present, still the question before us, whether with or without the adjunct of the design at the Rye House; and, from what has preceded, this confession of Monmouth was not necessary to establish Lord Russell's participation in it, any more than Lord Grey's confession afterwards, in his evidence on Lord Delamere's trial in January 1686. There he unequivocally stated, that the conduct of the different designed risings was assigned to different chiefs, — London to Shaftsbury, Cheshire to Monmouth, and the west to Russell. Of the ripe state of Cheshire, Monmouth indeed, according to him, made a regular report in form. Couple all this with all the documents in Sprat; with the avowals in Burnet; the depositions of the clouds of witnesses on the various trials, some perjured, many not; the confessions of many who were executed; the same facts (no matter to *the point in question*, by what means,) established in Scotland; and, in particular, the mission to bring up the men of absolute *confidence* from that country; the consequent journey of Baillie, and his refusal, in London, to deny that there were no communications with English lords

on the design for insurrection; and, in Scotland, to purge himself by oath from any knowledge of the Rye House Plot. Do this; and let any one then say, that *all* these varying circumstances, *all* these coincidences of testimony, multiplied at home and abroad, (however *some* of them may differ, or even be falsified,) are absolute inventions, concerted among the multitude of the parties that appeared on the scene, and that there was no reality in the plot for which Lord Russell suffered. Let any one do and say this, if he can.

Lord John has an express chapter on this reality*, in which, as we have noticed, he has excluded the particulars of the confession of Monmouth, the testimony of Grey, and the authority of Sprat. Just all the most pointed and pressing parts of the evidence, without the smallest attempt to examine them.† He states many horrors in the proceedings against the criminals, particularly in Scotland; he holds up much to *just* detestation; and he complains, with truth, of many breaches of the law in the course of process; but he nowhere, in our opinion, disproves the fact of the *design* to rise, or even, in some, to assassinate; nor, with regard to the first, the various overt acts indicating that design. He indeed, as he has a right

* Chap. 19.

† "The part of Hamlet to be necessarily omitted." This allusion does not perhaps become the gravity of an historical inquiry. But as Mr. Fox, in a still more dignified history, does not disdain to liken the Doctors of Oxford to Dogberry and Verges, I trust I may be forgiven.

to do, if he pleases, asserts his opinion, rather more confidently, I think, than Mr. Fox, that there never was any thing more than what Lady Russell said it was, a talk about these things. How that is to be reconciled with all the foregoing particulars, it must be left to the world to judge. No one can blame Lord John for making the attempt: his abilities I am not the man to undervalue; and if he has failed, it is because it was *impossible* he should succeed.

But here a parting question arises, in which, for a moment, we wish to indulge.

If Lord Russell, by his treason against the law of the land, was only the more faithful and devoted to the paramount laws of nature and reason; if he was the great and heroic patriot who sacrificed his life in attempting to deliver his country from oppression; why not avow, proclaim it, glory in it? Why deprive him, or allow him to deprive himself, of the honour that belongs to him? As it was, he entangled himself in irreconcilable assertions, to escape, first, conviction, and then punishment. Hence, his whole virtue as a patriot, a righter of wrongs, an assertor of the natural and inalienable privileges of the people, is frittered into nothing, by attempts at denial of his real conduct. So also his friends for him, both at the time, and now. Not a step do they stir, not an argument do they offer, not a testimony do they undermine, in order to disguise his legal guilt, but derogates from his public virtue. Thus, his self-devotion is extinguished in insur-

mountable difficulties, rash assertions, and disingenuous conjectures; all which might be avoided, and his moral fame exalted to that really high pitch which these abortive prejudices in vain endeavour to carry it.

Such, it appears to me, is the effect of the attempts (honest though they may be) to mystify his case. If he really meant to rebel in what he thought a holy cause, why all this jealousy, this extreme questioning of glaring facts? If not; if he did not like, as Burnett says, this mad exposing of himself, what becomes of his martyrdom?

One great mistake (at least if we are right ourselves,) seems to pervade the whole of the reasoning on the law of the case, both by Mr. Fox and Lord John Russell,—that a mere *consultation* about treasonable measures, if they are not carried into effect, is not treason in itself.

In this, if the *animus* is fully proved, we venture to say they are wrong. It is this animus which is to decide; for so sacred, for wise reasons, is the royal life, that merely to *intend* the destruction of the King, could it be discovered, is treason, although no step be taken towards it. The difficulty is *how* to discover it, and hence the necessity of an overt act. Dionysius held that a dream was sufficient, and put a man to death for it. The law of England does not say so; but this it does say, that in treason the rule of *voluntas pro facto* is retained in the statute of treasons itself, that second Magna Charta

in defence of the subject. "Non meus hic sermo est," but of a most accomplished and accurate lawyer and judge; not, indeed, so accomplished or so learned in the law of treasons as Mr. Fox, who, as we have seen, in Lord John's opinion, is not "easily matched by *any* lawyer;"* but still of a judge and a writer whose authority (in the courts at least) no lawyer ventures to dispute. I mean Mr. Justice Foster, whose opinion Lord John will now permit me to submit to him.

"In regard to treason," he says, "it (the law) considereth the wicked imaginations of the heart in the same degree of guilt as if carried into actual execution, *from the moment measures appear to have been taken to render them effectual*. And, therefore, if conspirators meet and *consult* how to kill the King, though they do not then fall upon any scheme for that purpose, this is an overt act of compassing his death; and so are all means made use of, be it advice, persuasions, or command, to incite or encourage others to commit the fact, or join in the attempt; and every person, who but assenteth to any overtures for that purpose, will be involved in the same guilt.

"The care the law hath taken for the personal safety of the King is not confined to actions or attempts of the more flagitious kind,—to assassination or poison, or other attempts directly and immediately aiming at his life.

* Life of Lord Russell, ii. 65.

"It is extended to every thing wilfully and deliberately done, or attempted, WHEREBY HIS LIFE MAY BE ENDANGERED. And, therefore, the *entering into measures* for deposing or imprisoning him, or to get his person into the power of the conspirators,—these offences are *overt acts* of treason within this breach of the statute.

"For experience has shown, that between the prisons and the graves of princes the distance is very small."*

Here, then, we may rest the law of the case as far as it regards the meetings at Shepherd's, the Council of Six, the sending to Scotland for men of absolute confidence, who came up in consequence, and upon the correspondence with Argyle on a demand of money and arms.

Here, we say, we may rest the law, although it is admitted no money was sent, no arms bought†, no insurrection actually levied, and thus we think the moral *intention* of Lord Russell to remedy grievances by a force put upon the King, though not by assassination, is fully proved. Even Mr. Hallam goes far towards this. "It is beyond doubt, he says," "that the supposed conspirators had debated among themselves the *subject of an insurrection, and poised the chances of civil war*." But he adds, "thus much the most jealous lawyer, I presume, will allow might be done without risking the penalties of treason."‡

* Foster's Crown Law, 194.

† That is not certain.

‡ Constitut. History, iii. 206.

I do not know. Without being a very jealous lawyer, I, and probably Mr. Hallam himself, would start if we saw an advertisement in the papers, signed, we will suppose, by Lord Melbourne, Lord Cottenham, Lord John, Lord Hill, and Lord Minto, the representatives of the treasure, law, police, army, and navy of the kingdom, and calling upon their fellow countrymen to meet, (say at the Crown and Anchor,) to debate the subject of an insurrection against the Queen, and to poise the chances of civil war! We should doubt a little, I think, the safety of their heads.

In Lord Russell's case, however, Hallam allows the *supposed* conspirators had gone farther, and concerted measures in different places, as well as in Scotland, for a rising, though *contingently*.

"There is a considerable difficulty," he says, "in stating the extent of their designs, but I think we may assume that a *wide spreading and formidable* insurrection was for several months in *agitation*: but the difficulties and hazards made them *recede*."*

Will this excuse them, or show that no treason was intended?

We are alive, however, to an objection to the establishment of the legal guilt of Lord Russell, which is made by his advocates, to which, as well as the legal proofs of it, we will now address ourselves.

Whatever has been held (says the argument) of treason's attaching, in certain circumstances, to mere

* Constitut. History, iii. p. 207.

consultations, it is answered, that these consultations must relate to the conspiring the *actual death* of the King, and not the mere raising an insurrection, or levying war; and that to establish the guilt of this, the war must be actually levied.

In the passage quoted from Mr. Justice Foster this is not what is held. For his words, as we have seen, are, that the law is not confined to attempts *immediately aiming at the life of the King*, but "is extended to every thing wilfully and deliberately done or attempted whereby his life *may be endangered*." But as war against a king must endanger his life, or it is no war, the plain sense of the thing, it should seem, demonstrates at once, that to conspire the one is the same as to conspire the other.

Mr. Fox, however, says no; and Mr. Fox's authority is held by Lord John, "not easily to be matched by *any* lawyer."

We are bound, therefore, to enter into this great question of constructive treason, in which Mr. Fox, and an act of parliament (not declaring or altering the law, but) reversing a particular attainder, are against us: the whole stream of law authorities, the maxims, decisions, and treatises of judges, for us.

In the treatise of Mr. Justice Foster, just cited, the point is laid down without a doubt. It is expressly stated, "that to *enter into measures* for imprisoning or deposing the King, or getting his person into our power, are *overt acts* within the breach of the statute," that is, of conspiring the King's death.

Well; is or is not a war against a king liable to these consequences? If he resist the war, and come with troops to give you battle, will you not fight him? If not, what becomes of your war? Cromwell said if he met the King in battle, he would as soon fire his pistol at him as any other man; and if Cromwell was right in his war, he was right as to his pistol. Lord Russell might not have fired his pistol, if he could help it, but he meant to have one to fire, and who is to say, if once in battle, that he could help it or not? Did he mean that, though he sought reform by arms, he was not to use them?

Besides, who is to answer for Lord Russell's confederates, whom *he* would have contributed to place in battle against their sovereign? In short, if a man organizes or encourages a conflict, is he not answerable both in law and reason for the consequences, even though he personally do not join in it?

So much for the reason of the thing. Now for the law.

I have said that the stream of the authorities was with us, and so they are, from the hour that gave birth to the statute, which it is said was so much invaded, to the present day.

But Mr. Fox and Lord John say, this is judges' law, and not the law of the land. Where does he find that the decisions of the judges, uniform, repeated, respected, and obeyed, are not the law of the land?

Where are we to look for that law but in these decisions?

In common law we have nothing else. In statute, the interpretation can only be in *them*. The moment any other power or person interferes, security is gone, and the constitution is overturned.

Mr. Fox may be a better lawyer than Lord Hale or Lord Holt, or Coke himself, or Sir Vicary Gibbs, but his law is not the law of the land: *their's* is. A single judge, indeed, may be wrong; or a whole court in error on a single case. But there is power by the same law which gave them the right to judge, to revise the judgment, and correct the error. Even if all judges at all times concur upon a point which from either policy or justice ought to be altered; there is the known remedy in the legislature.

In the instance before us was this ever administered? was it ever attempted?

If Mr. Fox is right, or Lord John is right, as to constructive treason, why have they not altered the law?

Both, probably, had power to do it, and the home secretary has it still. Will he now make the attempt, and argue it, in or out of parliament, with the judges? If not, he ought not to condemn them.

It is really strange that such rashness of opinion has been hazarded upon the mere *ipse dixit* of either of these honourable persons, without an authority quoted to bring the matter into doubt, and all authority (judicial at least, for I admit not mere private speculations,) against them.

Of these private speculations I have read the two

thought most worthy: the defence of Lord Russell's innocence by Sir Robert Atkyns; and remarks upon his trial by Sir John Hawles.

Neither of them produce, I will not say conviction, but any thing that is not produced, and attempted to be answered, in this commentary. I except, however, one argument by the first-mentioned, from which you may gather the character of much of the rest, which, in truth, seems more to be that of the syllabarum auceps, formularum cantor, than of one who manfully grapples with difficulties which he feels he can overcome. As a proof, take what he says of the guards.

Because that description of force, by name, is not noticed or recognized in any law-book, therefore, to conspire to seize them, without a better description, does not come within the purview of treason. Miserable, disgraceful, special pleading, which Lord Russell himself would have disdained, or he does not deserve his reputation.

Lord Russell, on his trial, had the full benefit of his objections to the law. He thought, as Mr. Fox seemed to think, that he was indicted on the 13 Car. II., which had expired. That act, which was temporary, made, for a time, a *conspiracy* to levy war, treason; which was not so before, and was now no longer in force.

He was answered, that he was not indicted for conspiracy to levy war, and therefore *not* upon that act, but upon the 25 Edward III. itself, for conspiring the

death of the King, of which the conspiracy to levy war *was only the overt act*. The whole case was reduced to this: the answer was unanswerable, and the error of Mr. Fox in not seeing it, is extraordinary.

Lord Russell applied for counsel to argue his objection, and was told, with no harshness, (for the whole court seemed to commiserate him,) that he should certainly have them, but must first admit the fact, without which it would be needless.

This he did not, or would not do: the *fact* was found against him by the jury, the judgment was not arrested, and he suffered.

There never was a greater error in history than that Lord Russell was not fairly tried. Even the objection for want of freeholders, which was said to be a violation of law, was coolly, calmly, and learnedly argued. For that point counsel *were* assigned him, among them Pollexfen and Holt, both Whigs, and they had every attention from the bench.

Pollexfen, the leader, was asked by the Chief Justice, whether he could find any judgment, that, in cases of treason by the common law, they might except for want of freehold? To which he answered, no. Then the whole argument was at an end, for the right to be tried by freeholders was only given by a statute of Hen.V., and that statute was repealed by one of Mary. Lord John, indeed, discovers above a hundred years afterwards, what it escaped all the writers and all the lawyers to discover on arguing the point, that the act of 1st Mary merely repeals

all laws creating treasons since Ed. III., and *does not at all interfere with the mode of trial, and therefore* Lord Russell was not legally tried.* Is it not remarkable that the able counsel I have named did not make this rejoinder to the argument of the Chief Justice?

If the act says so in terms, why not state it? If only an implication of Lord John, we must have a care that we are not entangled in *statesmen's* law, which would, *perhaps*, (I put it humbly,) be worse than judges.

But what are the words of the Chief Justice?

"The statute of Queen Mary comes and says all *trials* shall be by such evidence, and *in such manner*, as by common law they ought to have been."†

It therefore returned to the common law, as well in the mode of trial, as the law itself.

But, is it not a pity that this cogent objection, if founded, should have escaped Sir John Hawles, exhausting argument, and abuse too, upon this very decision?

He was splenetic enough, and seized many weaker objections. Among others, one is to the *many* and *variety* of reasons given by the judges on disallowing the challenge.

"The assigning many reasons," says he, "for one and the same thing, makes the judgment *justly* suspected."

I should have humbly thought the reverse; but with such a disposition to quarrel with the decision,

* Life of Lord Russell, ii, 63.

† State Trials, v. 711.

is it not astonishing that he did not hit upon this discovery of Lord John?

Even *he* allows that the only reason for requiring freeholds, before the condition of tradesmen became so respectable from wealth, was, that there might be men of sufficient substance on the jury; but he owns that "now, and *for some time* past, the value of trade is equal to that of land."*

He, therefore, though against his will, supports the reason, without impugning the law of the Chief Justice.

After every attention, then, to the counsel, and every advantage to the prisoner, from fair play to the argument, the court were unanimous in overruling the objection. Yet the act of William, reversing the attainder, states this failure of freeholders as a principal ground for it, because contrary to law. If so, where was the necessity for enacting it anew? For the present right to be tried by freeholders in treason, is derived, not from the common law, nor the act of Hen. V., nor the act of Mary, but from the express enactment of the Bill of Rights. But the act reversing the attainder says the verdict was vitiated. Must it not, *therefore*, be true? The vote, by the same authority, found, that the throne was vacant, with half a dozen lawful heirs standing around it. Was that also true?

Without better reasons than were assigned for either of these votes, we take the liberty of not believing either one or the other.

* State Trials, vi. 187.

All experience shows that large assemblies, particularly political ones, whatever the condition or education of their members, partake of the nature of mobs; and are often governed and blinded by the same heat and passion. After the passion is worn away by time, the cooler judgment of the closet busies itself with the truth alone.

Still Lord Russell is said by certain classes, most of whom take it upon trust, to have been a victim, and his death, as the statute of reversal (unjustly, we think,) calls it, a murder; because condemned for *constructive* treason.

This may justify Mr. Fox for *repeating* the opinion: the soundness of the opinion it will not prove.

It is remarkable that upon this subject Tillotson became a lawyer as well as Fox, only with this difference, suitable to their professions, that Fox, being a statesman, published his opinion in a state history addressed to the world; Tillotson, a clergyman, in prayers addressed to the Almighty. In a prayer written for Lady Russell on her loss of sight, he reasons with, though he submits to his Maker, on the case of Lord Russell, whom, he says, "Thou in thy holy and righteous Providence permitted, *under a colour of law and justice*, to be *unjustly* cut off from the land of the living."*

We shall treat farther of this supposed violation of the law of treason; but meantime was this grounded upon any thing in the composition of the court?

* Birch found a copy of this in short-hand in the Archbishop's common-place book.—Biog. Britt., article Tillotson.

Was Pemberton, who tried him, charged or chargeable with the least unfairness? Take what was said of him by a man who knew his profession and its history as well as most; take Sir Vicary Gibbs, himself afterwards a most correct judge, and at that time arguing for prisoners tried for this very constructive treason, if it be correct to call it so, and not a mere overt act.

"Lord Russell," says Mr. Gibbs, "was tried before my Lord Chief Justice Pemberton,—as wise, as learned, and as able a judge as ever adorned the bench."*

In 1794, Hardy and Horne Tooke were *indicted* for compassing the King's death.

What was the overt act by which it was to be proved? Compassing by force to dethrone the King! Precisely what is called, by Fox and Lord John, the *constructive* treason of Lord Russell.

It is not, however, my intention to swell this commentary, already too long, by going into the argument upon constructive treason in the abstract. But I will do better, for the purpose of this inquiry. I deny the whole fact of the existence of constructive treason at all; and venture to assert, that since the statute of Mary, which brought back treason to that of Edward, there has been no such thing in the annals of law. Though promulged, therefore, by the legislature, and echoed by Mr. Fox, Lord Russell was neither indicted nor condemned for constructive treason. Nay, he was explicitly told so by the court, when he

* Tooke's Trial, ii. 175.

took the objection; and lest there should be a possibility of a mistake, the jury were told so too.

This may appear startling to some. For how many thousands who follow this opinion, and argue upon it, both in public and in private, never read the trial?

To be short, and to avoid every thing like subtlety, he was not indicted for conspiring to levy war, but for compassing the King's death; *of which the consultations, or conspiring to levy war, were made the overt acts*, not the substantive treason.

If this was so, the whole declamation and high-sounding complaints of the stretching the law to make a victim; nay, the solemn language of the legislature itself, when it assigned the fact as a ground for reversing the attainder; is false, and falls to pieces, vanishing like a dream.

That it was so, hear better authority than mine, as I most appositely find it, in the celebrated defence of Hardy, *said* to be, like Lord Russell, tried on constructive treason, in 1794.

Two of the greatest ornaments of the bar were his counsel,—the one for eloquence, the other for knowledge,—Mr. Erskine and Sir Vicary Gibbs. I shall advert to them both; but as Sir Vicary made a direct statement of the real case of Lord Russell, and goes distinctly into the doctrine upon it, by availing myself of his language and opinion, I gladly avoid the intrusion of my own.

Hardy, like Russell, was indicted for compassing

the King's death, and not for conspiring to levy war; and, like Russell's, his overt act was an imputed conspiracy to produce rebellion in the kingdom. The jury, in the one case, believed the evidence offered for the overt act; in the other, they rejected it. As to the law in regard to the treason, they were both indicted on the same statute (25 Edw. 3.); and the whole contest turned upon the evidence, for the law seemed undisputed. Upon the last, hear Sir Vicary's own words to the jury.

"I will trouble you farther, merely with a statement of the way in which judges, who have had to try causes upon this statute, have laid down the law to the jury. I shall then have stated to you the indictment,—the statute upon which it is founded,—the construction of one of the most learned lawyers who ever lived upon that statute,—and the acting of one of the most learned judges who has ever adorned the bench, (I speak of Lord Chief Justice Pemberton,) when he sat on the trial of Lord Russell, who was charged with an offence of the same sort as that with which the prisoner at the bar now stands charged.

"The doctrine contained in that trial is, I suppose, law, because I have heard the trial alluded to in court, and not from the bar, but from the bench. I have heard the summing up of Lord Chief Justice Pemberton, who tried Lord Russell, alluded to, as containing the law of the land upon the subject of treason.

"My Lord Russell was tried upon this statute; and the indictment charged him with compassing the King's death; the overt act was, that 'to fulfil and perfect the said most horrible treason and traitorous compassings, imaginations, and purposes foresaid, he, the said William Russell, together with other false traitors, maliciously, traitorously, and advisedly between themselves, and with divers other traitors to the jurors unknown, did meet together, consult, agree, and conclude insurrection and rebellion against our Sovereign Lord the King, within this kingdom of England, to move and stir up, and the guards for the preservation of the person of our said Lord the King to seize and destroy, against the duty of his allegiance.'

"So you see," continues Mr. Gibbs, "the charge in that indictment was that Lord Russell had *compassed the King's death*, and, to effect that treason, had *conspired to raise insurrection* and rebellion against the King, and to seize the guards appointed for the preservation of the King's person.

"The evidence given in that case went certainly to show, if it went to show any thing, that Lord Russell had conspired to raise insurrection and rebellion in the kingdom, and to seize the King's guards; and yet Lord Chief Justice Pemberton, in summing-up, (I state this to show what is the matter for you to inquire into in this case,) does not tell the jury that the point for them to consider is, whether the prisoner had conspired to raise insurrection and rebel-

lion against the person of the King, and, if they found that, they must find the prisoner guilty; but he tells them this:—"Now the question before you will be, whether upon this whole matter you do believe, not that Lord Russell had raised insurrection and rebellion against the King, but whether you do believe my Lord Russell had any design upon the King's life, to destroy the King, or take away his life.' That is the charge which my Lord Chief Justice Pemberton gives to the jury who tried Lord Russell, and no man ever complained that the trial of Lord Russell was not sufficiently severe: that," he says, "is the material part here; it is used and given you by the King's counsel as an *evidence of this*, that he did conspire to raise an insurrection, and to cause a rising of the people, to make, as it were, a rebellion within the nation, and to surprise the King's guards, which they say *can have no other end but to seize and destroy the King*."

"So that Lord Chief Justice Pemberton puts it to the jury, that though they believed these facts, yet from these facts they were to collect whether the prisoner had, or had not, a design upon the King's life; for if he had not, they could not find him guilty. If that had not been his opinion of the law upon this subject he would not have put it to them to say whether Lord Russell by this means meant to accomplish the King's death; but would have put it,—*do you believe he conspired to raise an insurrection and rebellion against the person of the King?* if you be-

lieve that, you believe enough. He does not say that: he says, they put this to you as an *evidence that he meant to seize and destroy the King*; and he goes on to say, 'it is a great evidence,'—but it is *only* an evidence—(if my Lord Russell did design to seize the King's guards, and make an insurrection in the kingdom,) of a design to surprise the King's person. *It must be left to you upon the whole matter.* You have not evidence in this case as there was in the other matter that was tried in the morning, or yesterday, against the conspirators to kill the King at the Rye."*

Such was the opinion of, if not the best, at least one of the very best common lawyers of modern times, on the law of the case of Lord Russell, delivered while standing forward in defence of a prisoner, tried precisely on a similar indictment. May I be forgiven by Lord John if I think this lawyer equal in knowledge of the law even to Lord John and Mr. Fox themselves? We see, that in Lord Russell's case, he cannot quarrel even with the verdict of the jury as to the fact, still less with the law as laid down by the judges. One of those judges was Sir George Treby, afterwards, in far purer times, Chief Justice of the Common Pleas; a warm Whig, and strenuous promoter of the Revolution. It fell to this Whig judge (and so far surely no enemy to Lord Russell,) to pass the sentence on him, in which he told him his quality was great, but so was his crime. Need

* Hardy's Trial, iv. p. 94.

he have said this to one of his own party had he doubted the justice of the awful sentence he was about to pronounce?

Of the other judge, Sir Francis Pemberton, who presided at the trial, we have mentioned the eulogy by Sir Vicary, both here, and on the trial of Horne Tooke*, as a man for "wisdom, learning, and ability not to be exceeded."

His charge to the jury was fairness itself; and he particularly cautioned them, that his case was not the same as that of the men who had been tried for the Rye House Plot, properly so called, for conspiring to assassinate the King.

He confined the proof of the guilt, about which they were to inquire, solely to the design of insurrection; and he confined that guilt solely to the charge of compassing the King's death.

The whole supports the candid opinion of Hallam, that upon his summing-up the jury might have acquitted Lord Russell.

Lord John, however, without adverting to any part of this internal evidence of his fairness on the trial, (the only evidence he could justly advert to on the question,) thinks proper to transcribe some *unproved* accusations of turpitude against Sir Francis, to be found in an author, North, branded by many, and particularly by Whigs, as of doubtful authority, and full of slander. But, *granting* the fact, will that

* Supra.

do away any particle of what has been said of his fairness to Lord Russell?

On the trial of Hardy, Mr. Erskine did not enter so particularly as his colleague Mr. Gibbs into Lord Russell's case; but as his acknowledgments of the law were precisely the same, we will succinctly mark them in support of our opinion; for they amply prove his persuasion, that a conspiracy to rebel may be *evidence*, and therefore an *overt act* of legal (not constructive) treason, though not the treason itself. I request the reader, and particularly Lord John, to mark the following passages.

"The act of *conspiring to depose* the King may, indeed, be evidence, *according to circumstances*, of an intention to destroy his natural existence."

What more was done on Lord Russell's trial?

"The compassing the King's death is the treason, and *not the overt acts*, which are only laid as manifestations of the traitorous intention, or, in other words, as evidence *competent* to be left to a jury to prove it; and no conspiracy to levy war against the King, nor any conspiracy against his regal capacity, is a good overt act of compassing, *unless some force be exerted, OR IN CONTEMPLATION*, against the King's person; and that such force so exerted, *OR IN CONTEMPLATION*, is not *substantively* the treason of compassing, but *competent, in point of law, to establish it, if the jury, by the verdict of guilty, draw that conclusion of fact, from the evidence of the overt act.*"

Here, again, we ask, what more was done, or other law held, on Lord Russell's trial?

Again. "The charge of a conspiracy to depose the King is therefore laid before you *to establish that intention; its competency to be laid before you for that purpose is not disputed.* I am not contending that, under circumstances, a conspiracy to depose the King, and to annihilate his regal capacity, *may not be strong and satisfactory evidence of the intention to destroy his life.*"

In another place: "I do not mean to say that a conspiracy to levy war may not in many instances be laid as an overt act of compassing the King's death, because the war may *mediately* or immediately be pointed distinctly to his destruction or captivity; and, as Lord Hale truly says, 'small is the distance between the prisons and the graves of princes.'"

Thus, Mr. Erskine, as well as all the other lawyers we have cited, allows that a *design* to levy war *may* be an overt act of compassing the King's death, and this overt act must be left to the jury to decide upon. What more or less was practised in Lord Russell's case? But Erskine must be wrong; for the act of reversal says he was murdered, and Mr. Fox says he was murdered,—and Lord John, and Mackintosh, and all Whigs say he was murdered by constructive treason, and Lord John says it is not easy for any lawyer to match Mr. Fox on a point of law.

Probably, the passages that have been cited from Mr. Erskine may be thought enough. But there

are more, and, perhaps, more weighty ones; because they contain the doctrines of the greatest judges, to which Mr. Erskine implicitly bows. The first, Lord Coke's, who says expressly, that "a *preparation* to depose the King, and to take the King by force and strong hand, until he has yielded to certain demands, is a sufficient overt act to *prove* the compassing of the King's death." "He does not say, as a *proposition of law*," observes Mr. Erskine, "that he who prepares to seize the King, compasseth his death; but that a *preparation* to seize him is a sufficient *overt act* to *prove* the compassing; and he directly gives the reason,—'because of the strong tendency it has to that end.' This latter sentence," continues Mr. Erskine, "destroys all ambiguity. I agree, perfectly, with Lord Coke, and I think every judge would so decide, upon the general principles of law and evidence, without any resort to his authority for it."

Mr. Fox, therefore, and Mr. Erskine, both of them eminent Whigs, are here at issue upon a point which it therefore becomes not us to decide.

The next judicial authority with Mr. Erskine, is Lord Hale. "If men *conspire* to imprison the King by force and a strong hand until he has yielded to certain demands, and for that purpose *gather company, or write letters**, that is an overt act to prove the compassing the King's death, as it was held in Lord Cobham's case by *all* the judges."

Now, if this was what our great *political* jurists call

* Lord Russell did both.

judges' law, and not the law of the land, why (as we have asked before) did not the legislature interfere and correct it?

Mr. Erskine goes on to quote Lord Holt; and Lord Holt, as every body knows, was a firm Whig, a learned lawyer, and an incorruptible judge. He tried Sir John Friend, who took precisely the same objection to his indictment as Lord Russell; that it was for *conspiring* to levy war, which was not treason, though the actual levying it was. To this Holt answers, "For that, I must tell you that if there be only a conspiracy to levy war, it is not treason.* But if the design and conspiracy be either to kill the King, or to depose or imprison him, or put any force or restraint upon him, and the way of effecting these purposes is by levying war, there the *conspiracy and consultation to levy war* for that purpose is high treason, though no war be levied; for such consultation and conspiracy is an *overt act* of proving the compassing the death of the King."

Mr. Erskine contented himself with this extract from the clear charge of the Chief Justice; and a powerful one it is. I subjoin the rest of the charge, because, if possible, it renders it still more powerful, and the rather, because this, and the decision of the same great, enlightened, and honest judge in Ashton's case, are the last cases with which I shall trouble the reader.

* He said this most properly, because there may be called in law a levying of war which is not treason, but a great riot or tumult against the peace, as to pull down inclosures, &c.

In Friend's case, Lord Holt goes on to say, "Now that this should not be high treason if a war be not actually levied, is a very *strange* doctrine, and *the contrary has always been held to be law*." What say the statesmen lawyers to this? "There may be a war levied without any design upon the King's person, which, if levied, will be treason; but a bare designing to levy war, without more, will not be treason. But if there be, as I told you, a purpose and design to destroy the King, and to depose him from his throne, or to restrain him, or have any power over him, which is proposed or designed to be effected by the war that *is to be levied*, such a conspiracy and *consultation* to levy war, for the bringing this to pass, is an overt act of *high treason*. So that, gentlemen, as to that objection which he makes in point of law, it is of no force if *there be evidence sufficient to convince you that he did conspire to levy war for such an end*."

So much for Holt's opinion, and I ask if any language can be more precise, (I had almost said *so* precise,) to prove that to *conspire* to levy war, though not treason, is yet an *overt act* of what is, viz. the compassing the King's death, *to be left to the jury to decide*.

This decision in Friend's case is no more than a repetition of what the same judge ruled on the trial of Ashton. There the prisoner took the same objection, that he had not *done* the act he contemplated, and there the judge gave the same answer.

"Mr. Ashton, that you may not go away with a mistake, any that designed the deposition of the King

and Queen, and the invasion of the kingdom, which is proved by any overt act, is sufficient to prove that they compass and imagine the death of the King and Queen."

Mr. Ashton. "I presume it may be so: I believe that may be the construction of the law."*

Such, then, were the decisions of this correct judge, in which, too, he had the concurrence of the Whig Pollexfen, now become Chief Justice of the Common Pleas, as a reward for his services in the Revolution, and who had been the leading counsel for Lord Russell. Nor is it least remarkable, that these two causes of Friend and Ashton (who, if the legislature were right in calling the judgment on Lord Russell a murder, were themselves murdered,) were the first cases of treason that occurred under that very King and that very legislature who stamped the character of murder on the case of Russell.

What now becomes of the law authority of Mr. Fox upon the case before us? What of his assertion, that, *even under the most constrained construction* of the statute of Edward III., Russell and Sydney had committed no overt act indicating the imagining the King's death, and that the condemnation was a most flagrant violation of law and justice? † Blown to atoms, unless Lord John persist in his own promulgated opinions, that Mr. Fox is scarcely to be matched by any lawyer; and not only persist in, but prove it. That task will not be a slight one after the names I have cited, of Coke, Hale, Holt, Foster,

* State Trials, vi. p. 475.

† Fox, p. 51.

Eyre, who tried Hardy, and Erskine and Gibbs, who defended him. I do not touch upon the arguments of the crown lawyers who conducted that prosecution, because they *were* crown lawyers, and Lord John would probably reject their authority on that account, though now Secretary of State. But as he *is* Secretary of State, and for the Home Department, and must at least occasionally think it right to consult them, I mean no disrespect to his abilities in supposing that if, during his official power, designs to force the Queen, or the government, by *arms*, to measures they chose to resist, should break out (which God forefend!) he will candidly review, perhaps alter, his opinion.

It perhaps may be a question, how the defenders of Hardy came so fully to admit a doctrine which seemed to press so hardly on their client; and why they did not, like Lord Russell and Friend, plead, that he was tried, as Mr. Fox wrongfully said Russell was, upon *constructive* treason?

It was because they knew better. The indictment stared them in the face, as it might have done by Lord Russell, to show that he was tried upon the letter of the act, viz. for compassing the King's death, and not upon a construction of its meaning. They, therefore, were forced to admit the law, in order the better to show how entirely the conspiracy to levy war was left by all the judges in all the cases, but eminently in Russell's case, as a mere overt act for the jury, not the court, to decide.

The whole notion, therefore, of constructive trea-

son is fallacious. Neither in Lord Russell's, nor in any case, has it been even discussed as a matter of *law*.

How evidence may be construed, is another affair; but that is matter for the jury; and if a judge there interfere, and declare what is illegal evidence to be legal, as was done in Sidney's case, the verdict will be vitiated. But will any man say this was done on the trial of Russell? Again, I refer to Sir Vicary Gibbs's account of the fairness of the charge to the jury; and to Hallam, the admirer of Russell, who tells you, that on that charge he might have been acquitted.

The same writer says upon it, that in Ashton's case, just quoted, Holt had settled the point for ever.*

One thing remains, without which this disquisition might be deemed incomplete, the *competency* of the witnesses against Lord Russell, in point of law.

I say competency, because, with their *credibility*, unless the law was strained in their favour, (as, for example, if they stood *convicted* of perjury or felony, and yet were admitted,) we have little to do; that question was exclusively for the jury, who determined it. Nevertheless, a few observations may be allowed; for if really Lord Russell was innocent, and if the witnesses were perjured, known to be so, and su-

* Constitut. Hist., iii. p. 209. Yet Lord John says, the charge was *unfavourable* to him, though not violent. If Lord John, by *unfavourable*, means that any thing was strained beyond truth and reason to convict him, we find him here contradicted. If it was *unfavourable*, it was because upon the evidence it could not be otherwise.

borned, his life was sacrificed, and himself, what (in the spirit of party, not reason,) he is now always called, a victim.

In order to this question, there is no need even to inquire into the reality of the Rye House Plot; meaning by that, the plot to assassinate the King at the Rye. Of this, the Chief Justice tells the jury, in terms, that he was not even accused. Rumbold, Walcot, and the rest, might, therefore, be perfectly innocent, yet the case of Lord Russell be left where it was.

I will not, therefore, go into the long examination made by Mr. Fox, as to the share of Rumbold in the plot; still less into his position, that a death-bed protestation of innocence *must* be believed. In this, we humbly think Mr. Fox as wrong as an observer of mankind, as we have endeavoured to prove him so as a lawyer. This is contradicted by the history of man; and, in the case of an atheist, or one who believes not a future state, (though we mean not to accuse Rumbold of this,) there is not even a colour for it. Nevertheless, although Rumbold might not have actually embarked in all the wild plans detailed by the witnesses, nor even joined personally in any one of them, it is difficult to acquit him of being cognizant of something of the sort, and of having even named the place as convenient for the attempt, although he may afterward have receded. How else could the rest have been acquainted with it?

However, as even the existence of the assassination plot has nothing to do with Lord Russell, we

lay it aside, as well as the examination into its reality by Lord John, as *inter alios acta*; and confine ourselves to the competency of the evidence against him on the trial.

The witnesses were three in number, — Howard, Rumsey, and Shepherd. Against the last there does not seem even the imputation of wilful falsehood; and Hallam, who has critically searched the trial, thinks all were unwilling witnesses, and might have revealed more.*

But Howard had alleged solemnly, with hands upraised, and eyes to Heaven, that, not only Lord Russell could never have been concerned, but that there was no plot at all.

Well: as was remarked by the court and counsel, people, who are themselves guilty, do not generally *proclaim* their guilt to the world; and, if they have associates, will do what they can to avert suspicion from them. Howard himself says, no more than naturally, that, not thinking he would be called upon in court, he was “to outface the thing both for himself and his party.”†

But to whom, and how, did he make his declarations? Not to Russell, not to Sidney, not to Monmouth, not to any of the Council of Six, for they would have laughed at him; but certainly to many of their friends, who, he saw, were alarmed for them. Suppose he had done so before the privy council *at*

* This indeed clearly appears from the examination of Carstairs; supra.

† Trial of Lord Russell.

first, with a view to save them and himself, if he could; and then afterwards discovered what he knew! Would this have destroyed his competency, or even his credibility? Would it have been more than natural in an accomplice, more than what Lord Russell himself did on his trial, when, to save his life, he disguised the truth? Howard did no more.

But Howard was a man of bad repute. Lord John builds much upon Lord Russell's aversion to him; and very much upon the King's having, in the presence of a messenger of Monmouth, who took him some letters, shown anger at his keeping such company as Howard's, observing, "that he would not hang the worst dog he ever had on his evidence."

This is on the evidence of one Anthony Row, (Monmouth's messenger,) taken before the Lords *after* the Revolution. Is it not remarkable, that when pity and veneration for Lord Russell, and indignation at his fate, were at the highest, just after his fall, no one ever heard of this Mr. Row, or the King's exclamation? Are we at all acquainted with the character of Row himself? And is it not wonderful, with this notorious bad character of Howard, and particularly Lord Russell's aversion to him, that he or Monmouth should have allowed him to make one of only six persons out of all the discontented in England, who were conducting, or at least planning an enterprise of such fearful magnitude, that the least indiscretion, much more perfidy, would prove the destruction of them all?

With submission therefore,—though it is no more than natural for Lord John to urge these circumstances against one of the chief witnesses adverse to his ancestor,—his objection totters on the face of it. But grant that Lord Howard is blackened from head to foot, and that having confessed himself an accomplice, he disclosed the treason of another to save himself, will this *prove* that he swore *falsely*? Did his being promised his life if he told what he knew, imply that he was obliged to tell what he did not? Had the promise been contingent on the *conviction* of Russell, the argument would have been sound. As it was, it was properly answered by the court who established his competency, leaving his credibility to the jury, whose province it was.

But then he was an accomplice!

That, too, was properly answered. Who, particularly in crimes of so secret a nature as the conspiring treason, could ever be condemned if the testimony of accomplices was not to be allowed. It was pointedly observed, that then any man might conspire with certain impunity, for if the conspiracy succeeded, of course he would be safe, if not, he could scarcely be convicted.

But far from being new, is it not every day's practice? How many villains, how many murderers, have only been brought to punishment through the evidence of accomplices?

It is right, indeed, that collateral evidence should be taken in support of the oath. But even the want

of that will not disqualify. Was there no collateral evidence in this unhappy case? No meetings? No intercourse with Shaftsbury? No sending to Scotland for men of absolute confidence?

Upon the whole, though Howard had been worse than he was, he was legally producible; and, all other circumstances compared, the jury thought him credible.

All this reasoning applies in stronger force to Rumsey, the other witness; because before, and till long after the trial, he had a fairer character. Afterwards, on the trial of Cornish, he swore things contradictory to what he swore on the trial of Russell. He was therefore perjured in one or the other. Mackintosh, however, in his reasoning upon it, shows that the perjury was against Cornish, not Russell. "The scandal (of the latter trial)," says Sir James, "was so great, that the King was obliged in a few days to make tardy reparation for the precipitate injustice of his judges. The mutilated limbs of Cornish were restored to his relations; and Rumsey was confined for life to St. Nicholas's Island, at Plymouth."*

This reasoning, also, is adopted by Lord John; and what does it amount to? That Rumsey was perjured on the trial of *Cornish*; and the proof of it, that he was NOT perjured on the trial of *Russell*.

With this we conclude a disquisition which has been necessarily, (and, would we could not say, tedi-

* Hist. of Revolut., i. 200.

ously,) long. We have ventured it, however, because the amiable as well as honourable character of the unfortunate but noble subject of it;—his virtues, his happiness in private, and his integrity in public life;—his probity, his firmness, his sincerity, atoning (if any thing could atone,) for his bigotry;—render him no common person in the story of his times. Add to this, his religious resignation, as well as philosophical calmness, in his last moments; the consideration of his illustrious birth, and the high place from which he fell, hazarding and losing it for the sake, as he supposed, of his oppressed country;—all this makes him, what I have called him, one of the favourites of history. It is this, rather than any brilliancy of parts, or even sagacity of understanding, in which he seems to have wanted sobriety, that endears his memory to posterity, and makes his errors forgotten. He has been called, and thought, a great man. How is that term misapplied by party bias! Mr. Fox called the rash and feeble, though generous and ill-used Argyle, *great*! Lord Russell's greatness (for in this he was really great) consisted in his refusing to preserve his life (if he *could* have preserved it, which is very doubtful,) at the expense of his principles. This, and the intense interest of his trial, generated the most important questions at the time, and have been agitated ever since with all the deepest feelings of party spirit, and all that excitement, which, carried to excess, end, for the most part, in blind enthusiasm.

This must be my apology, if, in endeavouring to sift (not, I think, a difficult, but) a much misrepresented case to the bottom, I have been anxious to leave nothing untouched, which, from the talents or learning, station or interests, of those who have applied themselves to it, seems entitled to consideration. Hence, the impossibility of compression, and the danger of prolixity.

Who may agree or disagree with me in the opinions I have hazarded, it is not easy to foresee. All that I would stipulate for is, the sincerity of my own conviction of their soundness, after a conscientious, laborious, and, I trust I may say, impartial investigation of the whole matter. I say impartial, because in surviving every person and every object that could warp my judgment, I have long taken leave of every thing like party spirit. The struggles of the world are over, and history has lost its principal charm, because unable any longer to excite to action. If I know myself, there is not a line of this inquiry which is written in any spirit but that of truth. Had I been the King I would have pardoned Lord Russell; pardoned him without the conditions he himself proposed,—of living an exile from his country. I would have trusted to his honour, to have overcome his bigotry, and remain a good subject. Such mercy would, indeed, have been twice blessed; “blessed in him that gives, and him that takes.” But I do not on that account think that he was

either a hero or a martyr; or that the law, either of treason or of evidence, was strained a single point to produce his conviction.

OF ALGERNON SIDNEY.

Of the trial of his fellow-sufferer, Sidney, very different must be the opinion. Every one who has a regard for the laws, or believes there was a breach of them in order to put even an enemy to death, must believe it one of the foulest of murders. In legal guilt they were equally plunged: in their moral intentions, totally different.

Russell was loyal to his country, if not to his King; and to that country he always wished practical good, which he would not hazard for the sake of a theory. Sidney, more rugged, more determined and stern, and less susceptible of “the soft arts of peace;” with a less stake also in the country, and, in fact, little favoured by the good fortune which attended his colleague,—was a hot, as well as visionary theorist. If he therefore was really the patriotic Englishman he is supposed by his admirers, and not a character *sui generis*, formed by himself on models not of this or that country, but after schemes of his own, we must at least allow that his notions were not those of by far the greater number of his countrymen. He suffered his theories to boil over, from what he no doubt took for the perfection of patriotism, and which he emulated, as it distinguished his prototypes (or those

he wished to think so) among the heroes of antiquity. Burnet, and his biographers, say he formed himself upon the model of Marcus Brutus; but not only Marcus Brutus was not calculated for our meridian, and would certainly not have made a good Englishman, but we look in vain for the imitation of his model during the hard and hateful tyranny of Cromwell, who had little in common with the immolated tyrant of Rome. Yet the boast of Sidney, or his friends for him, was in the well known lines he composed, after he had appeared among the judges upon the trial of his Sovereign; and though he did not sign the warrant for his execution, had boasted of it as the "greatest and bravest action that ever was done in England or any where else."* The lines are,

"Manus hæc inimica tyrannis,

"Ense petit placidam sub libertate quietem."

When, however, our modern Brutus came to encounter the English Cæsar, this hostile hand deadened, and let fall the sword, which, as has been well observed, "it was fated should never be brandished but against his King and the laws of his country." He lay retired, says the same authority, "during the usurpation, amusing himself, while his country was bleeding, with visions of commonwealths and liberty, and the rights of the people, founded on Grecian and Roman story." †

* Meadley, 85.

† See History of the Revolution of 1688, by George Moore esq., one of the few authors who seem not afraid of speaking out in regard

The prejudice in favour of this canonized person (canonized, we venture to say, more for the infamous injustice practised upon him, than any well-deserving of his own towards his country,) is so widely spread, and has ever been so uninterrupted, that most writers seem afraid even to inquire into it. He perished on the scaffold, to which he was doomed by a most scandalous breach of law, to please a profligate Sovereign, by a still more profligate judge. But, if we are not mistaken, this forms the chief ingredient of his reputation, as a lover of England, though not, perhaps, as a wild theorist in abstract notions of liberty. Had no law been strained for his conviction; had Jeffries not presided on his trial; had his jury been fair, and the evidence legal, as there can be no doubt as to the facts of the case,—what would have been his merit? Like Lord Russell, with a rashness and indiscretion, blamed by Fox and Lord John Russell themselves, and amounting to even wickedness in the opinion of Mackintosh*, he embarked in a plan of insurrection, in which, not only success was impossible, but which was not justifiable by the measures of the court, arbitrary as they were. For even our most sanguine advocates for the rights of rebellion, admit that they can or ought only to be

to the real character and life of this victim of oppression, and his own turbulency, p. 412. Yet this author cannot justly be said to be prejudiced *against* the heroes of the Revolution, for the seven signers whom Hallam only calls *eminent*, he denominates *divine*.

* Vide *supra*, for the mischiefs and miseries entailed upon a country by an ill-concerted or inadequate rebellion.

asserted when the mischiefs complained of are more intolerable than the evil to be encountered, which, here, Lord John (differing, however, as we have seen, from Mr. Fox,) thinks was not the case.*

And strange if it had been! for we see the most deciding motive, with Russell at least, was his disappointment in not being able to carry the exclusion bill; so that, because he could not remove a speculative, and, at worst, a future evil, by depriving the legal heir of the crown of his undoubted right, he was prepared to involve his country in all the horrors of civil war.

But fire and sword (only part of these horrors) were nothing in comparison with the theories of the theoretic Sidney. His immediate views in opposing a mere arbitrary king were nothing in comparison with the ultimate objects of his millennium,—the restoration of his darling Commonwealth, in which not one of a hundred thousand of his countrymen would have seconded him. Yet for this he is canonized; and a late biographer and admirer suffers his partiality so to blind him, that, in adverting to the act reversing his attainder, he says, it has “rescued his memory from the imputation of all legal and *moral* guilt.” The one is clear: for the other, we have looked through the act, and looked in vain.†

* *Supra*.

† See the Memoirs of A. Sidney, by Mr. Meadley, a compilation of research and interest.

How well he really loved his country in comparison with his theories, may be gathered from two circumstances, not generally, or sufficiently, I think, adverted to by those whose object is not party victory, but historical truth. In Burnet we have the following, apparently, unimportant, but really (with a view to our subject) most momentous, because most characteristic, narration.

“Algernon Sidney, and some others of the *Commonwealth* party, came to De Witt, (during the first Dutch war,) and pressed him to think of an invasion of England and Scotland, and gave him great assurances of a strong party; and they were bringing many officers to Holland to join in the undertaking. They dealt, also, with some in Amsterdam, who were particularly sharpened against the King, and were for turning England again into a commonwealth.

“The matter was for some time in agitation at the Hague; but De Witt was against it, and got it to be laid aside.” Why? Because, among other topics, he said “there was no reason to think that, while the Parliament was so firm to the King, *any discontents* could be carried so far as to a general rising, which these men undertook for. So he said, what would be the effect of turning England into a commonwealth but the ruin of Holland? Therefore all that he would engage in was to *weaken* the trade of England, and destroy their fleet, in which he succeeded the following year beyond all expectation.”*

* Burnet, i. p. 226.

This was all very wise, and very legitimate of De Witt, as a Dutchman at war with England; but what shall we say to the virtuous, patriotic, and disinterested Algernon, so ready to lay his head on the block in the *good old* cause, the cause of his country? What to his associates, equally virtuous and patriotic with himself, for courting a man's assistance to invade their native land, and even listening to him when he tells them, all he would undertake would be to weaken her trade and destroy her fleet!

Take the continuation of the picture from the same painter.

"The busy men in Scotland," proceeds Burnet, "being encouraged from Rotterdam, went about the country." To do what? Join in a magnanimous resistance of a cruel and unbearable oppression, which all men felt? Arm in defence of laws which had not then been invaded? No.—Oppression, or any strong breach of law, had not then occurred; nor was there then any general loud complaint against the restored monarch. But no matter; these patriots thought the country *ought* to be discontented as well as themselves, because they had a king, and not a commonwealth; and they therefore, says the reverend historian, "*went about the country,*" (*too quiescent*, it seems, for them,) "*to try if* any men of weight would set themselves at the head of their designs for an insurrection."*

* Burnet, i. p. 226.

And this is virtue, this patriotism, this Algernon Sidney, and the good old cause!

Well, what was their success? "The Earl of Cassilis and Lockhart were the two persons they resolved to try." The sense, then, of discontent, and of the invasion of liberty, even in these two, was not clear, or known; they were only to experiment upon it, with a *view to civil war*. I think this, in such a state of things, very blameable. Mr. Fox probably would not. "We have seen that," observing of Russell and Sidney, "that there was unquestionable reason to believe that they had often met and consulted, as well for the purpose of ascertaining the means they *actually* possessed, as *for that of devising others*, for delivering their country from the dreadful servitude into which it had fallen;" He adds, "and thus far their conduct appears clearly to have been laudable."*

The "busy men in Scotland, therefore, who went about the country to *try* to raise rebellion, no doubt thought themselves justified in doing so, by these principles of Mr. Fox, for they were only devising *other means*, in addition to those they already possessed for what they naturally called *delivering* their country.

Strange that such patriotism should not succeed, and that revolt should not follow the held up finger of Sidney. But Lord Cassilis had promised the King to engage in no plots, and, like a gentleman, though,

* Fox, p. 50.

if we may believe Echard*, unlike Sidney, kept his word. "So he did not suffer them (the *experimenters*) to come so far as to make him any propositions. Lockhart did the same, and they seeing *no other person that had credit enough* in the country to bring the people about him, gave over all projects for that year."†

Here is there not an exact picture of patriots run mad, either from visionary theories of the rights of man, or the vanity of supposing they know better than others what is good for them? What right had these busy Scotchmen to run about the country preaching rebellion, and *trying* who would listen to them? What right had Sidney, because he had dreamed himself into the character of Marcus Brutus, to press on the miseries of an invasion against his country, with a view to alter a constitution with which it was content? Had De Witt hearkened to him, all the blood that would have been shed would have been upon his head, and millions might have execrated a name, which, from the fortuitous circumstance of his own personal wrongs,—not his personal merit, or benefactions to his country, is now so consecrated to fame.

The same extravagance as to his theory, accompanied by the same indifference to his country's safety,

* Upon receiving his pardon or safe conduct, whatever it was, to return to England, Echard says he gave repeated promises of quiet and obedience.—Echard 697, quoted in Gen. Dic.

† Burnet, i. 227.

or his country's honour, is displayed in another transaction, not generally noticed by those who are disposed to talk of him with triumph.

It appears from a letter of Barillon preserved in Dalrymple, that in 1680, (be it observed, some three years after he had received security from the King to remain in England unmolested, upon promise of obedience,) Sidney urged the French King to aid the establishment of a commonwealth; that is, to overturn the government of England. For what reason, except to serve his own theory, or his own interest, it would be difficult to say. For at that time, though the natural profligacy of Charles had shown itself, Heaven knows, in abundant proofs, none but a man maddened with the rage of a sect, could hold that rebellion, not merely against the person, but the office of the King, had become justifiable. Even Fox, and Mackintosh, one of whose great heroes Sidney was,—even Price, the modern Hugh Peters, would scarcely go so far as this. Yet such, it seems, was the opinion of this great patriot; and mark for what patriotic reasons, addressed, be it observed, to the government of Louis XIV.

"It is the interest," he says, "of the French monarch to forward the establishment of a *republic* in England."

This, of itself, was iniquitous in the greatest degree, whatever glosses may be put upon it by his brother visionaries of modern times. For why millions of men, who wanted no such change, were to

be exposed to the miseries of a civil war, because a single, or a hundred philosophers of reform,—even were they all Brutuses, thought fit to prefer a particular constitution, I think, of a rational creature I need not ask.

But what are we to think of the arguments of this *Englishman*, by which he sought to influence a French King to turn England into a republic? “The monarchy,” he says, “might have the Prince of Orange at its head, and thereby connect England and Holland. Further, such a monarch *would consult the interests and inclinations of his subjects*, and call forth their best energies. England would rise the proud magnificent rival of France. But let the French King give her a republican form of government, and she will sink into an insignificant commercial state, and French ambition encounter no opposition.”

On these terms, says the author from whom I make this extract, was Sidney content to purchase his darling republic. Such was his regard for the independence of his country.*

Now, if this account is true, if ever Sidney wrote such a letter, who will not scoff at his patriotism, or English feelings? Who not say, that, provided no law had been broken to effect it, he deserved the block, by which he perished? All his great qualities (and he had some very great ones) will not shield him from the detestation of thinking men among his countrymen. He deserved attainder a thousand

* Moore's History of the Revolution, p. 44.

times more than Strafford; and the infamy of Charles II., in betraying his country to France, is fully equalled.*

These measures, however, in regard to the invasion of his country by foreign powers, have received something, in shape at least, like apology. There have been illustrious exiles, it is said, who have sought to restore the liberties of a country, and deliver it from oppression through the means of a foreign force; and the examples of Thrasybulus and Conon have been vouched by Mr. Meadley; to which he might have added, in modern times, the invasions of France by a very honourable body of men, the emigrants, who certainly wished not to destroy, but restore their country. He might, also, have enlisted on his side the many invitations of the Jacobites, in England and Scotland, to France, in the eighteenth century.

None of these cases, we think, apply.

Thrasybulus delivered his country from the thirty tyrants imposed upon it by a *foreign* conquest, under whose yoke it actually was; and which yoke, not its ancient constitution, it was his object to destroy. Conon engaged a foreign (the Persian) force to

* Mr. Meadley makes no mention of this transaction. Perhaps he knew not of it; or, if he did, disbelieved it; or thought, as he seems to do of the money said to be taken from France, that it was a forgery of Barillon. If he knew or believed it, he never would have said as he does in his preface, “His (Sidney's) conduct is held out to ingenious youth as an example of pure and disinterested patriotism.”—Pref. p. 8.

assist, not to destroy his country, which had been already conquered in war by another state, from which he attempted to release it. The emigrants of France had never acknowledged the Revolution which forced them to emigrate. They had never put off their hostile character, and had a right to make war themselves, and, of course, join the standards of other hostile powers.

To assimilate these cases, we ought to suppose that Charles had never been received by the universal consent of the nation; that the constitution had not been restored; and that England never had been at peace. What is still more decisive; we are to consider the reasons actually assigned for the conduct pursued by Sidney, which were not so much founded on flagrant invasions of liberty, which he wished to resist, *preserving* the constitution, as the destruction of the constitution itself, because he fancied another. Mr. Meadley, indeed, almost reduces the defence of this bad conduct to a sense of private wrongs. Sidney had been persecuted at home and abroad, and "in these circumstances," says his apologist, "had recourse to the enemies of his country, from whom alone he could expect either favour or protection."*

Favour or protection he had a right to seek; but would that justify his urging an invasion of his country, with a view to overturn its laws? What was it that stamped indelible disgrace upon Bolingbroke,

* p. 142.

but his sacrifice of public duty to private feelings? "My attainder," said he, "tingled in every vein." Hence, he became minister to a Prince, his country's enemy, whom he would have otherwise abjured.

Mr. Meadley, however, seems to think private wrongs will justify public treason. "The proceedings of the court," he says, "had loosened every moral tie."

Suppose it had; would that have justified an attack upon the lives and properties of the people? But even these proceedings, bad as they were, had not then (1665) assumed that character of tyranny which, in some minds, (those of Fox and Mackintosh,) would have justified the insurrection projected by Sidney; whose *private* wrongs at *this* time were the sole excuse for his conduct.

"In seeking to retrieve his *ruined fortunes*," says his biographer, "and to put an end to the oppression (not of his country, but) of his friends and party, by the means of a foreign invasion, he only followed the examples which all ages, and all nations, have presented, amongst exiles of distinguished fame. And though their prudence may be fairly questioned, their patriotism cannot reasonably be impeached."*

According, therefore, to Mr. Meadley, to retrieve a ruined fortune, will justify treason. Where are these justifications to stop?

As to the assertion respecting exiles, the fact may be true, but not the conclusion. Mr. Meadley is

* Meadley, p. 142.

not to be told, that of all defences, the "defendit numerus" is the least defensible. What code of morality could stand? What wickedness, somewhere or other, not be justified, if example is to do it?

But, even, is the example relied upon so universal as to be without brilliant exceptions? As the immaculate Sidney was so fond of modelling himself on antique specimens, would he not have done better to have copied Themistocles than Coriolanus? With a thousand times more personal wrongs than the English republican, (who, indeed, had not one,) the Athenian chose to undergo voluntary death, rather than bear arms against his country. Mr. Meadley, as an historian, ought to have recollected this, as well as the answer given by a man who knew no theories, but of honour, to the rebel who pitied him in the arms of death:—"Il n'y a point de pitié pour moi, qui meurs en homme de bien; il faut avoir pitié de vous, qui portez des armes contre votre prince, votre patrie, et votre serment."

Mr. Meadley should have recollected this brilliant trait before he ventured the excuse he does for his hero; but Sidney, though he might be a knight sans peur, was, according to our view of him, not sans reproche. He might be a Bourbon, but certainly not a Bayard.

We come now to another branch of the enquiry into the real virtue and real love of country which were supposed to illustrate this great idol; for it would be impossible not to notice the severe incul-

pation attempted to be fixed upon him by some, and the overstrained defence of him against it by others, which form one of those problems in history which it is difficult to solve. The reader anticipates the charge of bribery by French money,—the consequence of Dalrymple's publications of the various documents he found in the Scots College at Paris.

I shall not, nor is it necessary I should, go minutely into this question, though of sufficient importance, because few of those who are most convinced of the actual receipt of the money from Barillon profess to believe, that it was for any purpose inconsistent with what he *thought* his duty to his country, *according to the view he took of it*. He might, indeed, have taken it, with a view to thwart or distress the King; but that, with Mr. Fox, Sir James, and all who hold that a right of war had accrued to his subjects, would be heroic virtue, not meanness.

Mr. Meadley, of course, leans this way, when he says, "if he received the money, it was doubtless for some *public* purpose, as he is understood to have made occasional disbursements among his own inferior partizans. Even on this less probable view of the subject, his character may be free from stain, *unless it* be received as an indisputable maxim, that in resisting the oppression of an arbitrary government, it is immoral to accept of foreign aid."*

Now, it cannot be too often impressed, that it is dangerous to be always flying to extreme principles

* Memoirs, p. 179.

to justify doubtful acts. We here, again, see an instance of it; for unless, upon every act of oppression, (I might almost say, every unpopular act,) rebellion is to follow, this defence of accepting foreign aid, to cause revolt at home, will not hold. The whole reign of Charles was bad; but, to justify revolt, it ought to have been more than bad; it ought to have been so intolerable, as to despair of remedy. Mr. Meadley is bound to show that this was so in 1678, 1679, and 1680, when this money was given. But though there had been much wrong, none of the great acts of tyranny had then been committed. The great oppressors (and bloody they were) were the authors of the Popish Plot; the great cause of misery, that they could not carry the Exclusion Bill. Will this justify Sidney in taking money to create rebellion? If he did so for that purpose, we have no scruple to say, he ought to have lost his head long before he did.

Be this as it may. Of the meanness of a mere bribe, all must at least *wish* to acquit him; for his faults were chiefly those of pride, and a ruggedness of temper, which partook of anything but a love of money; still less, of a proneness to sacrifice any principle for the sake of it. Nevertheless, the simple fact of the transaction is a matter of evidence, whatever its character; and this evidence, I know not that we can rebut. There must at least be better proof against it, than the mere opinion set up, of the roguery of Barillon, without any support whatsoever, but

that he was a Frenchman, and *might* have kept the money himself. This is all that is really offered for it by Lord John Russell, Mr. Meadley, or others.

Mr. Meadley, holding a brief for Sidney, says, and truly, that the credibility of a single witness turns on the character and situation of the party. He adds, strangely, that he does not dispute the *general authenticity* of Barillon's statements; "but his fidelity may be *fairly* questioned in a case where he was doubly interested to deceive."* This double interest is, that he might wish to enhance his importance with his master, and rob him of his money.

Admirable opinion of mankind! most correct moral code! Why, if this were true, no ambassador could ever be employed, for he never could be believed; no servant ever trusted, for he might always be tempted to steal.

It is no pleasure to think that Lord John Russell has adopted this line of reasoning. He is a secretary of state. What would he say to Mr. Meadley, if he should attack him thus,—“You have had the disposal of secret service money, and it may fairly be inferred that you pocketed it yourself?”

The proof? That it is every body's interest to steal when he can do so without discovery; and you *might* have done so.

Mr. Meadley would not say this; but who is to answer for another, if his principle is sound?

Where, indeed, evidence is obscure, or doubtful, or parts of it are flatly contradictory to each other, cha-

* Memoirs, p. 178.

racter may fairly be resorted to. But here not only the evidence is all on one side, positively and clearly asserted by the ambassador of France, and not contradicted; but I see no reason, except what is drawn from our national and very vulgar prejudices, why a French nobleman is not to be believed as well as an English gentleman. Monsieur Barrillon asserts the fact, and states it in his accounts to his sovereign, who might easily have ascertained their falsehood, if falsehood there was; the parties receiving being all alive. But Barillon does more. In the history of this scheme of bribery, (if that is its character,) he tells you where he failed, as well as where he succeeded. He failed with Lord Russell and Hollis; he succeeded with Sidney and Powle.* If he was dishonest, and masked his dishonesty with a false account of Sidney, why stop short, and be honest as to Russell? The character for honour was as unblemished in the one as in the other, and both became equally incapable of detecting him, for both were dead.

But the *assertion* that Barillon *might* have swindled his master is supported by his being rich, and it is particularly proved by a letter of Sevigné, in which she says, "Barillon a fait ici un grand séjour: son emploi est admirable *cette année*. Il manquera cinquante mille francs; mais il sait bien où les prendre." After his final return (from England) she says, in

* Speaker of the "spurious and motley," who called and believed themselves the House of Commons, and invited King William to assume the administration. Vide *supra*.

another letter, "Monsieur B. est riche." And why not? Are there not honest as well as foul ways of growing rich? It is not even stated that he was not always rich; or had grown so, suddenly and unaccountably, so as to warrant surprise at it. These letters however warrant Lord John to think they give a *strong colour* "to suspicions that Barillon exhibited false accounts and forged names to his master. For his Lordship observes that from the first letter he appears to have had a share in the subsidies granted to Charles."

Now, without, in the first place, asking Lord John whether he had ascertained what time was meant by *cette année*, we might request to know how this strong assertion is proved by the premises, or by any thing adduced by his Lordship more than the possibility of it? Even fifty thousand francs do not make such a sum as would create suspicion in an unprejudiced person. "Nothing, however, was more easy," says Lord John, "than for Barillon to tell his master that he had influenced the Commons to refuse the supplies, and to have put the supposed pensions into his pocket, without fear of detection." Certainly nothing was more easy, if, according to this apparent system of ethics, all men are to be taken for rogues until they prove themselves honest. But if the contrary apothegm has sometimes been taught us in our courts and schools, how are these suspicions of Barillon proved, and, emphatically, how are they so by the letters? For it requires, with submission to Lord

John, deeper arguments than he has used, to make this out. In particular he has made one oversight, as to the first letter, fatal to the whole proposition, which it seems extraordinary that a person claiming to unravel a doubtful point in history, should have committed. For this first letter of Sevigné, on which, without even offering a reason, he grounds the suspicion that Barillon *shared* in the subsidy to Charles, is dated in 1672, whereas Barillon was *not* ambassador, nor even in England, till 1677, and the lists of the bribes themselves show them to have been given in 1678, 1679, and 1680. Exclusive of this, the system of pensioning had commenced under the preceding ambassadors. What, then, becomes of Lord John's strong colour for his suspicions? If we wanted the most powerful proof of the force and fallacy of party prejudice in an historian, we could not seize upon one more illustrative of the point than in this defence of Sidney at the expense of Barillon.*

Still, though the fact of Barillon's falsehood is by no means proved, the real intentional *corruption* of Sidney is equally without demonstration. That he took the money is asserted, and the contrary at least not clear; but as the motive alone of an action is the deciding proof of its character, we must pause before we convict him of wilful corruption. Did he

* Life of Lord Russell, i. 190. The whole money said to be distributed amounted to but 11,000 guineas in two years. Suppose Barillon had pocketed the whole, it would scarcely have supported Lord John's inference from the letters.

do any thing contrary to his conscience; any thing he would not otherwise have done, in consequence of the money, supposing it given?

We must agree, I think, with those who say no.

The difficulty is to know how, in his case, or in that of other pensioners, if they did not *sell* their votes, (that is, if their conduct would have been the same with as without the money,) how and to what purpose money could be employed?

Had an insurrection been in question, and it had been to purchase arms, the matter is intelligible. But how, if their consciences were not sold, the pensions were to benefit the payer of them, baffles conjecture. Lord Bacon said he believed he had sold justice, but not injustice. Was there any thing like this among these pensioners? But Sidney was not even in parliament, and there is no trace at the time of an intended revolt. Lord John says, no man of common sense can believe that he took the money for himself.

I know not why. For whom or for what did he take it? He had formerly owed great obligations to France. Lewis is supposed to have contributed to his support, when, from his own account, he was a destitute wanderer, without knowing where to look for existence.* He was still needy, made more so, perhaps, by generosity; for generosity he had.

Under these circumstances I see no ground for Lord John's opinion. Certainly not in one of the

* See his letters to his father in the Sidney papers.

reasons he gives for it, that he killed a fine horse rather than be *forced* to sell it to Lewis XIV., who threatened to take it from him if he did not. This was mere pride, and not disinterestedness. Pride of every sort was his constitutional character. Old Whitelocke refused to be joined with him in the embassy to Copenhagen, because "he knew well the overruling temper and height of Colonel Sidney; he therefore endeavoured to excuse himself on account of his old age." *

That height and overrule must have been very great indeed, that made Whitelocke refuse a lucrative mission.

Upon the whole, I fear we must leave the question of the money where we found it. It is clear that Russell and Hollis refused it with scorn. It is *not* clear that Sidney did so. How he reconciled it to his conscience must for ever be unknown.

The ingratitude of Sidney to Charles the Second has also been made a question. It is certain that his character for integrity, (I do not mean honesty,) would have shone out with greater lustre, had he either never come home from his voluntary exile, or had never plotted against the person whose pardon he had accepted.

Lord John disputes the propriety of the word, and, technically speaking, he may be right; for I believe there is no record of a pardon in form having passed the seal. Nevertheless, his representation of the

* Whitelocke, p. 681.

case between Sidney and his King does not seem strictly correct. "He was not," says Lord John, "excepted out of the act of indemnity, and had he come over immediately afterwards, he could not have been prosecuted or *imprisoned* without a breach of law and justice." *

This is true. But he did *not* come over, for among other reasons, both he and his friends for him were afraid to trust the government to which he had made himself wantonly and personally hateful. It was not *merely* then, as has been said, that he despised all who submitted. Without waiting a moment to ascertain the real situation of his country, or make trial of the restored monarch, with his usual violence, (mixed, as we have observed, with not a little fear,) with a fury against all forms of government, and all governors who did not come up to his own notions (Whitelocke would say, "his height and overruling temper,") he chose to throw himself away under pretence that his country was not good enough to receive him. He therefore wrote a passionate letter to a friend, who advised his return, which Meadley says would have done honour to the noblest characters of Greece and Rome.

Without enquiring who are meant by these noblest characters, most of whom, after the times came when they were able to write their names, were a set of self-interested ruffians, it is certain the letter breathes a very exalted spirit, and were it not stained by a violence both unexampled and unjustifiable, of

* Life of Lord Russell, i. p. 198.

exaggerated prejudice, and not a few *personal* feelings, it would command our unqualified respect. As it is, it is the most unmixed as well as the strongest testimonial of that height of mind which belonged to him, but which, having little real philosophy to temper its rage, was the cause of much calamity both to himself and his country. Indiscriminate abuse both of the times and the actors in them, the consequence of bitter disappointment, forms much of the character of this patriotic letter. Such a worthless weather-cock as Lambert,—such a zealot as Vane,—such a miserable enthusiast as Haselrigg, are heroes with him, whom but for their rage in common with him against kings he must have utterly despised. The military activity of Lambert might have commanded some attention from him; but of all men, from his own decided cast of thought, he must have laughed at the crackbrained enthusiasm of Vane, and spurned at the despicable capacity of Haselrigg. Yet of these men he says, “Where they cannot live in safety, I cannot live at all; though they may be the first, as *being more eminent* than I, I must follow their example in suffering, as I have been their companion in acting.” *

In another part, evidently stung with the restoration of the King, whom, and his ministers, he at least *prematurely* abuses, he bursts out with this invective: “Perhaps they may find the *King's* glory is *their* shame; *his* plenty, the people's misery; and that the

* Letter without date or superscription, quoted in Meadley, p. 81.

gaining of an office or a little money, is a poor reward for *destroying* a nation, which, if it were preserved in liberty and virtue, would be truly the most glorious in the world.*

Well, this is true, and equally so that its virtue and liberty were afterwards little consulted. But, exclusive that its liberty was fully as much trenched upon by the Popish Plot parliament, with Russell at its head, as by the King, what right or reason had Sidney, except what was drawn from his own sourness and inveterate prejudices, *then* to calumniate the King and his ministers? “The honour,” he says, “of English parliaments has ever been in making the nation glorious and happy, not in selling and destroying the interest of it to satisfy the lust of one man. Miserable nation! that from so great a height of glory (we suppose he means the glory of the Rump) is fallen into the most despicable condition in the world, of having all its good depending upon the breath and will of *the vilest persons in it*, cheated and sold by them they trusted. Infamous tariffick! equal almost in guilt to that of Judas.” †

This eloquent heat is, I suppose, what Mr. Meadley thinks renders Sidney equal to the heroes of Greece and Rome. In excitement it may be so, but if we calmly look at the names of the majority of the counsellors of Charles, whom he thus designates as the vilest persons in the nation, and find among them those of Clarendon, Southampton, Ormond, Holles, and

* Meadley, p. 80.

† Id. p. 80.

Delamere: if we do not altogether disagree, we may come to the conclusion that his judgment was perverted by his passion, which indeed seems to have been the prominent part of his character through life.

By cheating, and selling, and infamous traffick, however, he probably alludes to Monk and the other contributors to the Restoration, who had repented of the confusion and overthrow of the laws which they had occasioned. Yet to Monk's interest to make his peace and promote him, his father at least did not disdain to apply. Whether he would have refused to profit by it, if employed, was never ascertained, for it was refused on account of his personal violence and voluntary revilings of the King. Hence, probably, in lamenting the fate of Vane and Haselrigg, he was not at all unmindful of his own. Lord John says, however, that he could have returned with safety. The question is what he thought of it himself? I am not therefore one of those (Hume among them) who say that he chose *voluntary* banishment rather than submit to a government and family which he *abhorred*. These words are true, but they would have been more true had the word *fear* been added to them. This is so far of consequence as it tends to the elucidation of the only object we have in view, the real character and motives to action of this, in many things admirable, but, in English history, we think too much admired, person. Fear, then, or rather apprehension of severe prosecution, (for I do not mean want of personal courage,)

had as much effect as rage and contempt in making him renounce his country. So far, therefore, his conduct was not altogether heroic. But if violence, if abuse, extreme anger against all governors except those after his own fancy, if to call his restored King a bandit, though it subjected him to ruin, can prove him a hero, or that he possessed either supereminent sense, or supereminent virtue, he certainly deserves the rank which Mr. Meadley would assign him.

Those, however, who think that more calm convictions, as well as more sober conduct, would have raised him higher in our estimation, will not quit their opinions, from the mere circumstance that he was illegally put to death for acting up to these his exaggerated principles.

Lord John quarrels with Hume for accusing him of ingratitude and breach of faith, in applying for a pardon, and immediately after entering into plots against the government. From this, it should seem, Lord John thinks he owed *nothing* to the King, for he says he might have returned to England without a passport.

Yet, in the same breath, he says, such was the state of the law, so little was it a protection, that he could not rely upon it without the *additional* favour of the court.* This favour he obtained, and, as Echard (before quoted) remarks, upon promise of obedience and abstaining from plots. He there-

* Life of Russell, i. p. 199.

fore stands confessedly convicted of ingratitude and breach of faith, and Hume is vindicated.

But, far more than this, was nothing to be guarded against but the *uncertainties* of the law? Were there not *certainities* still more fearful? The illustrious exile, during his self-banishment from disgust, had been a little more than disgusted. He had been guilty of high treason in adhering to the King's enemies during the Dutch war. This he did when he joined De Witt, as above related, counselled him to invade the kingdom, and promised him the support of a band of rebels like himself. And for what were these people rebels? For the interests of their country, or because of oppression? No. Oppression (in 1665) had then but little shown itself. It was their own interests, their own revenge, that prompted them. Ludlow had lost his command; Sidney his embassy; both their power. The revered old constitution was hateful to them; they wished again for the moderation, equity, and *appointments* of the Long Parliament; and for this, to which their theories of government exquisitely conduced, they were ready to have drenched their country in blood. Had Sidney never been heard of afterwards; had he never perished unjustly on the scaffold, (unjustly, not because he was innocent, but because the law had been perverted to destroy him,) where would have been his fame?

But to return to his new treason with De Witt. There can be little doubt that it must have been

known to the government, for Burnet, we see, relates it. That he was conscious himself, not only of the fact, but of its consequences in law, can be still less disputed. Was it nothing, then, to obtain an amnesty from the King, not only in regard to all his treasons against his father, (from which, notwithstanding the act of indemnity, Lord John owns he had but little protection,) but also those more glaring, more indisputable, and more recent ones, which he had practised against Charles himself? Lord John really seems spell-bound by his party; he would not otherwise hazard so many inconsistencies and errors in reasoning in defence of a man who might really have been the great person he has been thought, but that he was for ever turbulent, for ever moody, and never to be wrought upon, by either favour or benefits, if thwarted in bringing his dangerous theories into practice. In these theories rhapsody presided, quite as often as reason.*

This attachment to his speculations, and impatience of opposition to them, are not ill described by Burnet himself. "He was," says the Bishop, "a

* What are we to say to his positions, that, by the law of God, a master has power of life and death over his servant; that the King is not King till he is crowned; that that which is not just, is not *law*, and ought not to be obeyed; meaning though enacted. (This, however, was preached in the senate by Mr. Fox, when he reduced obedience to mere prudence.) Lastly, that the right of dissolving parliament is not simply in the King. The use intended to be made of the first proposition is evident, because kings of course are servants, and the people masters, who may of course kill their kings whenever they please.

steady man, even to obstinacy; sincere, but of a rough and boisterous temper, that could not bear contradiction. He was stiff to all republican principles; and such an enemy to every thing that *looked like monarchy*, (was he the more praiseworthy for this?) that he set himself in high opposition against Cromwell when he was Protector."

Of this last assertion I have not been able to find the proof, though Hume repeats it; and it should appear, that, if not awed by the superiority of Cromwell, who would have made him feel the weight of his arm had he stirred, he at least thought it as well to remain safely in the retreats of Penshurst, though not quiet even there. For his elder brother, Lord Lisle, complains indignantly of the disturbance, even in mere house arrangements, which was given him by a younger son. The account is characteristic, and little creditable either to his temper, his moderation or his modesty; though very much in unison with the real spirit of republicanism, which is invariably so far ambitious as never to be content with a second place. The trait appears trifling, "*sed hæ nugæ seria ducent in mala.*" His after-life partook of the colouring of this trifling trait.*

* "In earnest", says Lord Lisle, (who himself seems a little of the same breed,) writing to his father, "I think, laying all other matters aside, this which hath happened most eminently on this occasion, is very extraordinary; that the *younger* son should so *domineer* in the house, that not only in regard to this matter which I have spoken of, but at all times, I am uncertain whether I can have the liberty to look into it or no. For it seems that it is not his chamber, but the *great room*

That he sometimes was not a more dutiful son than a complaisant brother, is, I fear, too certain; at least whoever reads the pathetic letter of his father to him, of August 1660, may not uncharitably form that conclusion. Lord Leicester begins thus:—

"To the Honourable Aulgernon Sidney.

"Disuse of writing hath made it uneasy to me; age makes it hard; and the weakness of sight and hand makes it almost impossible.

"This may excuse me to every body, and particularly to you, who have not invited me much unto it; but rather have given me cause to think that you were willing to save me the labour of writing, and yourself the trouble of reading my letters.

"For after you had left me sick, solitary, and sad at Penshurst, and that you had resolved to undertake the employment wherein you have lately been*, you neither came to give a farewell, nor did so much as send one to me, but only writ a wrangling letter or two about money.

"And now I am again upon the point of retiring to my poor habitation; having for myself no other design than to pass the small remainder of my days

of the house, and perhaps *the whole*, he commands; and on this occasion I may most properly say it, that his *extremest vanity and want of judgment* are so known, that there will be some wonder at it." (Letter preserved at Penshurst, and published by Mr. Meadley. *Memoirs*, p. 316.)

* Ambassador to the northern powers.

innocently and quietly; and, if it pleases God, to be gathered in peace to my fathers.

"And concerning you, what to resolve in myself, or what to advise you, truly I know not; for you must give me leave to remember, of how little weight my opinions and counsels have been with you, and how unkindly and unfriendly you have rejected those exhortations and admonitions which, in much affection and kindness, I have given you upon many occasions, and in almost every thing, from the highest to the lowest, that hath concerned you; and this you may think sufficient to discourage me from putting my advices into the like danger.

"Yet somewhat I will say; and first, I think it unfit, and perhaps as yet unsafe, for you to come into England; for I believe Powell hath told you, that he heard, when he was here, that you were likely to be excepted out of the general act of pardon and oblivion; and though I know not what you have done or said here or there, yet I have several ways heard, that there is an ill opinion of you, as of any, even of those that condemned the late King.

"And when I thought there was no other exception to you, than your being of the other party, I spoke to the General* in your behalf, who told me that very ill offices had been done you; but he would assist you as much as justly he could.

"And I intended then also to speak to somebody

* Monk.

else; you may guess whom I mean; but, since that, I have heard such things of you, that in the doubtfulness only of their being true, no man will open his mouth for you.

"I will tell you some passages, and you shall do well to clear yourself of them.

"It is said that the University of Copenhagen brought their *Album* unto you to write something therein; and that you did *scribere in Albo* these words,

"Manus hæc inimica tyrannis,

"Ense petit placidam sub libertate quietem;"

and put your name to it.

"This cannot but be publicly known if it be true.

"It is also said, that a minister, who hath married a Lady Lawrence here at Chelsea, but now dwelling at Copenhagen, being there in company with you, said, 'I think you were none of the late King's judges, nor guilty of his death;' meaning our King. 'Guilty!' said you, 'Do you call that guilt? Why, it was the justest and bravest action that ever was done in England, or any where else;' with other words to the same effect.

"It is said also, that you having heard of a design to seize upon you, or to cause you to be taken prisoner, you took notice of it to the King of Denmark himself, and said, 'I hear there is a design to seize upon me; but who is it hath that design?'

"Est ce notre bandit?"

by which you are understood to mean the King.

"Besides this, it is reported that you have been heard to say many scornful and contemptuous things of the King's person and family, which, unless you can justify yourself, will hardly be forgiven or forgotten; for such personal offences make deeper impressions than public actions, either of war or treaty."*

Is not this as plain sense, as touching complaint and admonition? The lesson it gave was forcible, in this, that rage and personal abuse against our superiors are by no means necessarily what they may be taken for, — courage and patriotic virtue. That it should have an effect upon him, particularly in his exile, when he fell into want, cannot surprise us; and several of his letters indicate much compunction at being shaken from his father's esteem and affection. They do more; they show so much that is amiable every way, that when we think of the wreck of it, occasioned by his prejudices and self-delusions, we only the more feelingly exclaim,—

"Oh! what a noble mind was there o'erthrown."

Mr. Meadley seems to think these anxieties to be restored to his father's good opinion *meritorious*. Is it, then, meritorious to neglect a father in his age; and when reproached by him for it, not to be indifferent? Alas! what does it prove more than that his feelings were not altogether hardened, nor absolutely destroyed, by his principles? Even while submitting

* Meadley, Appendix vi.

to his parent, he breaks out into something like reproach and sauciness, and certainly a high presumption of superiority in himself. "If," says he, "there be no reason for allowing me any assistance out of the family, as long as there is a possibility for me to live without it, I have discharged you. If those helps are only to be given to those that have neither spirit nor industry in anything to help themselves, I deserve none. *Or, if supplies are only the rewards of importunity, or given to avoid the trouble of being solicited, I think I shall for ever free you for that reason.*"

This is at least disrespectful, if not insolent language, and more like a self-sufficient grumbling boy, endeavouring to bully his parent, than the dutiful representation of a son of such a father. A son, too, at full maturity, and who had represented his country to a foreign state. But when we think, that his father was the writer of such a letter as is set forth above, who but must wonder, as well as lament, that the writer of this claims to be one of the idols of England?

His family friendships do not seem to have improved as he lived on. We have seen how he encountered the resentment of his eldest brother for insolence in endeavouring to take the command of their father's house, to his exclusion. When he returned to England by favour of the court, he twice endeavoured to get into parliament, in order to oppose it; but was twice foiled; the last time by

his other brother Henry, who obtained the seat. Thus, whether in the capacity of son or brother, he does not seem to have been too much esteemed, though, as we have often seen, this does not at all interfere with the most violent patriotism.

The displeasure against him, conceived by his venerable father in the letter that has been detailed of 1660, continued nearly the whole of the rest of his life; yet the letter seems to be written in no spirit of party, on account of his son's former conduct during the civil war. In that war, though, in the beginning of it, Lord Leicester had been appointed Lord Lieutenant of Ireland by the King, he was soon displaced; took no part, but made his peace with the parliament, and quarrelled not with his son for siding so zealously with them. But the obstinate fierceness of his personal rage, as reported to him from Copenhagen, and the violent (may we not say the brutal) opprobrium of the language imputed to him in regard to the restored monarch, whom he called "*notre bandit*," justly provoked his parent's anger, as it must have done that of every body else, not corrupted to the core with the insolence of democratical vanity. Do I in this expression undervalue the rights of the people? No; the real people are always honest, always estimable; nay, they are what I have never denied them to be,—the real fountain of power. But demagogues, though their leaders, or rather their drivers, (for such is the more literal meaning of the word,) are not the

people. It is they, because they have not either the humility or modesty of wisdom, who are insolent, pretending, and usurping. Such were the tribunes, the *Dentati*, the *Saturnini* of Rome.

That Sidney resembled these in every part of his character it would be gross injustice, as well as ignorance, to insinuate; but from the sketch that has been given, there are traits of likeness, which, through all the halo of splendour with which his death surrounded him, are not undiscoverable. Had it not been for that death, or rather the manner of it,—had it not been for the violent straining of the law, which converted a merited punishment into an infamous murder, and gave him ample opportunities of displaying the noble energies of his mind,—he would have been little different from other conspirators. But his injuries were too glaring, the determination to destroy him too plain, and the instruments of the wickedness too revolting, not to make every man in the nation take part in his case as if it had been his own. On the other hand, his gallant defence, his unbroken spirit, his contempt for the arts practised against him, his collectedness, soundness, and clearness in argument, although certain of death, elevated him beyond himself, and he became no longer a mere enthusiast, but a real hero. In this he was different from Russell, who only inspired his hearers with pity: Sidney his with awe. All this clothed, and still clothes him with a veneration which his life would never have inspired;

for it was in his death, not his life, that he was a hero.

It follows, that, in our opinion, had he escaped, or been pardoned, and remained, if he could have remained, in quietness, without plotting to *force* his opinions upon others, or destroy a government he was bound to obey, because he preferred another form more suitable to his theories, he probably would have descended to posterity as, what he appears to have been, a discontented, turbulent theorist; the victim of disappointed ambition; the disturber, not the benefactor of his country!

No. VII.

THE OXFORD DECREE.

“Ecce iterum Crispinus,” I am afraid the reader will exclaim, on seeing an additional article to this Appendix.

Nor would the subject of it, however curious as a part of the history of the times, challenge any particular investigation, but for the unfairness with which I think it has been treated by Mr. Fox.

All that is noticed by him becomes of sufficient importance, particularly in history, to be noticed by others, whether they agree or disagree with him.

In this instance, as well as in many others, where

popular doctrines are concerned, we venture to disagree with him.

That he should condemn, and even ridicule (or endeavour to do it) with bitterness, a decree condemning his most favourite tenets upon public and constitutional questions, is not surprising; no more than that he should pour out the vials of his wrath, with even unusual asperity, against men who presumed to express indignation at revolutionary doctrines, although many of them went far, as they thought, and we think, to sap the foundations, not only of the English, but of all government.

Now, we are not going to defend the wisdom of issuing this decree, although it was promulged at a time when the headlong violence of a great party in the nation (certainly not without provocation from the wickedness and corruption of the court) threatened more than what justice required, or books could prove,—a right to attempt the destruction of the monarch, and, possibly, of the monarchy itself.

All this was to be effected also by the means of civil war, and, as we shall see, from the doctrines condemned, of authorised murder.

Still, perhaps it would have been better to have answered the propositions they condemned, (and the majority of them, we think, admit of the fullest answer,) than to attempt their confutation by a display of violence, and a high tone of authority, which, when confined to mere forms and denunciatory language, lose their effect in their impotency.

But besides this, the adulatory style of the decree, which calls such a profligate as Charles II. the breath of their nostrils, is calculated to fill even Tories (at least those of the present more enlightened days) with disgust and aversion.

On the other hand, we are not to forget that this was no uncommon or exaggerated tone at the time among those with whom old custom, and an extreme deference for royalty, still continued to operate in all forms of speech. This I do not mean to defend, but only to account for it; and merely point out that in those days to use the most inflated language of flattery, whether to prince or subject, was perfectly consistent with the most conscientious as well as most rational modes of thinking.

Who can read Dryden's dedications without indignation?

On the other hand, therefore, we say, that we ought not to be so wrought upon by mere vehemence of abuse, as, without inquiry, to agree in the justice of this *general* attack of Mr. Fox on the Oxford decree.

We desire to discriminate between the good and the bad, and protest against involving all the propositions it contains in one universal sweeping execration.

Mr. Fox, or Sir James, or other champions for popular pretensions, would, in the usual popular phraseology, say, that where all are bad, it would be useless to discriminate. But is it so with the decree. Let us inquire.

Of twenty-seven propositions of which the decree consists, and which, with the books containing them, are condemned to be burnt (ridiculously according to our present sober maxims, but customary in those days,)* only three are mentioned by Mr. Fox; and their condemnation naturally draws forth all his ire, seemingly against the whole. They condemned, he says, "*every principle* upon which the constitution of this, or any other free country can maintain itself."

"Nor was this learned body satisfied with stigmatizing such principles as contrary to the Holy Scriptures, to the decrees of councils, to the writings of the fathers, to the faith and profession of the primitive church, as destructive of the kingly government, the safety of his Majesty's person, the public peace, the laws of nature, and bounds of human society; but—after enumerating the several obnoxious propositions, among which was one the declaring all civil authority to be derived from the people; another asserting a mutual contract, tacit or express, between the King and his subjects; a third maintaining the lawfulness of changing the succession to the crown, *with many others of the like nature*,—they solemnly deemed all and *every one* of those propositions to be not only false and seditious, but *impious*, and that the books that contained them were fitted to lead to rebellion, murder of princes, and atheism itself.†"

* How many Tory sermons were ordered to be burned by the hands of the common hangman! The decree itself underwent that fate afterwards by order of parliament.

† Hist. of James II. 56.

To doubt these propositions, still more to condemn them, was high treason in the eyes of Mr. Fox. What wonder, then, that he should, in the following sentences, indulge to the utmost stretch his indignation against those who presumed to blame them.

“Such are the absurdities which men are not ashamed to utter in order to cast odious imputations upon their adversaries; and such the manner in which *churchmen* will abuse, *when it suits their policy*, the holy name of that religion whose first precept is to love one another, *for the purpose of teaching us to hate our neighbours* with more than ordinary rancour.”*

When we come to the propositions themselves, which after such an accusation we think we are bound to do, we shall see whether it is deserved. Meantime, we may ask, why this rancorous injustice is ascribed so *emphatically to churchmen*? This we cannot reconcile either to the experience of history or the common knowledge of mankind. We at least think that party writers may rival them.

We do not, however, say it is an absolute logical conclusion that Mr. Fox meant to class, under the words “with many others of a like nature,” *all* the propositions denounced, with the three he has mentioned. Yet, as he has mentioned no exceptions, may we not fairly ask whether his language does not admit of that presumption? If so, where is the fairness of the historian in leaving it to be supposed that four and twenty out of the seven and twenty propositions were

* Hist. of James II. 56.

of the same nature as the three he has produced, without vouchsafing to give the reader the least inkling as to their contents.

We are not so unjust to Mr. Fox as to say that in his mind all these propositions were equally innocent; but as he makes no exception, as his invective is general against the decree, and all those who promulgated it, we are left to suppose that, in his mind, every part of it was equally obnoxious.

Let us, therefore, examine a little more minutely how these strictures are deserved.

We have shown in the body of this work that even the three propositions he names are by no means received by all the world as incontrovertible truths. It is by no means without modifications, and those of the first importance, that the proposition declaring all civil authority to be derived from the people is held to be true. It is any thing but an axiom *universally* and *necessarily* received.

Still less is that other, that there is always “a mutual contract, tacit or express, between the King and his subjects;” and, though the lawfulness of changing the succession of the crown, by the whole legislature, King, Lords, and Commons, may not be questionable, the right of the people to do it *of themselves*, if the lawful King is in existence, is not only not clear, but is a breach of those very principles of the constitution which Mr. Fox quarrels with the decree for endeavouring, as he says, to subvert.

So far, therefore, even the three propositions he

thinks so clear, as to found upon it his vituperation of the University for condemning them, are not universally or unreservedly acknowledged.

If we examine many, I may say most of the others, it will be difficult for Mr. Fox himself to convince any large portion of the world that their condemnation deserved (I will not say the anathema pronounced against it, but) a much less severe reprehension. It might be a fault by pronouncing public sentence upon these propositions, to bring into more notice than they themselves could have commanded glaring absurdities, or glaring wickedness, which must have been soon despised and forgotten; but this was, in our minds, the principal or sole fault of the University.

Take, for instance, the fourth proposition condemned:—

“The sovereignty of England is in the three estates, viz., King, Lords, and Commons. The King has but a co-ordinate power, and may be overruled by the other two.” (*Lex Rex. Hunton; of a limited and mixed monarchy.—Baxter, H. C. Polit. Catechism.*)

So then, according to this, the two houses of parliament, without the King, ought to make the laws.

Take also the tenth:—

“Possession and strength give a right to govern; and *success in a cause or enterprize proclaims it to be lawful and just.* To pursue it, is to comply with the will of God, because it is to follow the conduct of his Providence.” (*Hobbs. Owen’s Sermon before the*

Regicides, Jan. 31, 1648.—Baxter. Jenkins’s Petition, Oct. 1651.)

Then, the man who murders me, having succeeded in his enterprize, has done nothing but what is lawful and just, and follows the conduct of Providence!

Also the eleventh and twelfth:—

“In the state of nature *there is no difference between good and evil, right and wrong.* The state of nature is a state of war, in which every man hath a right to all things.”

“The foundation of civil authority is this natural right, which is not given, but left to the supreme magistrate, upon men’s entering into societies; and not only a foreign invader, but a domestic rebel, puts himself again into a state of nature, to be proceeded against, not as a subject, but an enemy; *and consequently acquires by his rebellion* the same right over the life of his prince, as the prince, for the most heinous crimes, has over the life of his own subjects.”

We will not affront the reader with commenting upon a line of this.

The thirteenth:—“Every man, after his entering into a society, retains a right of defending himself against force; and cannot transfer that right to the commonwealth, when he consents to that union whereby a commonwealth is made; and in case a great many men together have already resisted the commonwealth, for which every one of them expecteth death, they have liberty then to join together to assist one another.

Their bearing of arms subsequent to the first *breach of their duty*, though it be to maintain what they have done, is no new unjust act; and if it be only to defend their persons, is not unjust at all."

Had this right of resistance been held to be against unjust or unlawful force, it would have been true. But the words, *breach of their duty*, show that the force may be neither unjust nor unlawful; and yet to resist it, is not rebellion.

The fifteenth: — "If a people, that, by oath and duty, are obliged to a sovereign, shall *sinfully* dispossess him, and, contrary to their covenants, choose and covenant with another, they may be obliged by their later covenants, notwithstanding their former." — (*Baxter, H. C.*)

If this be true, what becomes of the sanctity of an oath?

The seventeenth: — "*An oath obligeth, not in the sense of the imposer, but the takers.*" — (*Sherriff's Case.*)

A premium upon hypocrisy and deceit.

The nineteenth and twentieth: —

"The powers of this world are usurpations upon the prerogative of Jesus Christ; *and it is the duty of God's people to destroy them, in order to the setting Christ upon his throne.*" — (*Fifth Monarchy Men.*)

"The Presbyterian government is the sceptre of Christ's kingdom, to which kings, as well as others, are bound to submit; and the king's supremacy in ecclesiastical affairs, asserted by the Church of Eng-

land, is injurious to Christ, the sole King, and Head of his Church." — (*Altare Damascenum. Apolog. Relat. Hist. Indulg. Cartwright. Travers.*)

Mere madness, but very wicked.

The twenty-third to the twenty-seventh: — "Wicked kings and tyrants ought to be put to death; *and if the judges and inferior magistrates will not do their office, the power of the sword devolves to the people; if the major part of the people refuse to exercise this power, then the ministers may excommunicate such a king; after which it is lawful for any of the subjects to kill him, as the people did Athaliah, and Jehu, Jezabel.*" (Buchanan. Knox. Goodman. Gilby. Jesuits.)

If this be true, king-murder is always virtue, and the priest the only king. Moreover, what becomes of that "damnable doctrine, that princes excommunicated by the Pope may be dethroned and murdered by their subjects," which all good English protestants so zealously abjure? It is here established for ever.

"After the sealing of the Scripture canon, the people of God in all ages are to expect new revelations for a rule of their actions; *and it is lawful for a private man, having an inward motion from God, to kill a tyrant.*" (Quakers, and other enthusiasts. Goodman.)

Every private man is thus the master of the life of another.

Again, "The example of Phineas *is to us instead of a command*; for what God hath commanded or

approved in one age, must needs oblige in all." (*Goodman. Knox. Napthali.*)

Thus any man that pleases, though we no longer live under a theocracy, or have the immediate command of God, except from an inward motion, may hold himself the instrument of God's vengeance, and murder whom he likes.

Lastly, "King Charles the First was lawfully put to death; and his murderers were the blessed instrument of God's glory in their generation." (*Milton. Goodwin. Owen.*)

Well, does not this, and all the rest of the propositions, uphold what Mr. Fox so reprehends,—the opinion expressed by the framers of the decree,—that they were impious, and the books containing them fitted to lead to (they might have said enjoined) rebellion, the murder of princes, and atheism itself?

Yet for expressing this opinion, among others, a Whig parliament afterwards, in its wisdom and its patriotism, ordered the decree to be burned by the common hangman.

We now, indeed, laugh at these propositions; but not so at the time of the decree, when there were almost as many *different* creeds in the science of government as there were men; and the zealots, who preached the knife on the authority of Scripture, found thousands of still greater zealots eager to obey them. Hence the opposing zeal of the University so vituperated by Mr. Fox, with what reason, the world may now judge.

Their zeal may have been mistaken, if you will. Has Mr. Fox made no mistakes?

Was he right in consigning those who condemned *such* propositions to the detestation of mankind? Has he been quite so just, so free from prejudice and passion, so clear in his *laborious* inquiry after truth, in this strange concealment of the greater part of the decree he so abominates?

But not content with holding up, not merely the authors of the decree, but the whole church, to execration, he lays down his trenchant sword, and *endeavours* also to sting them with ridicule. With this, as a matter of taste, we have no business; though the taste might be questionable.

Certainly for an historian who, it is said, was peculiarly jealous to render his history chaste and simple, so as to banish all argument of his own as extraneous interruption, the taste of introducing wit and ridicule against the heads of one of the most venerable universities in the world, (as if he were writing a political pamphlet,) might not only be doubted, but thought absolutely inconsistent with his professed aim.

With the wit itself we will not meddle, except to say, that if to condemn such propositions as we have mentioned as impious and dangerous, bears any resemblance to the assertion by two fools,—that a false accusation against a lady was flat burglary, then the comparison of the Vice Chancellor and

Doctors of Oxford to Dogberry and Verges, was wit in itself, and worthy the dignity and sobriety of history.

Mr. Fox, on a thousand accounts, was justly entitled to the admiration of his countrymen and of the world; but not, I fear, for his critique on the Oxford decree.

THE END.

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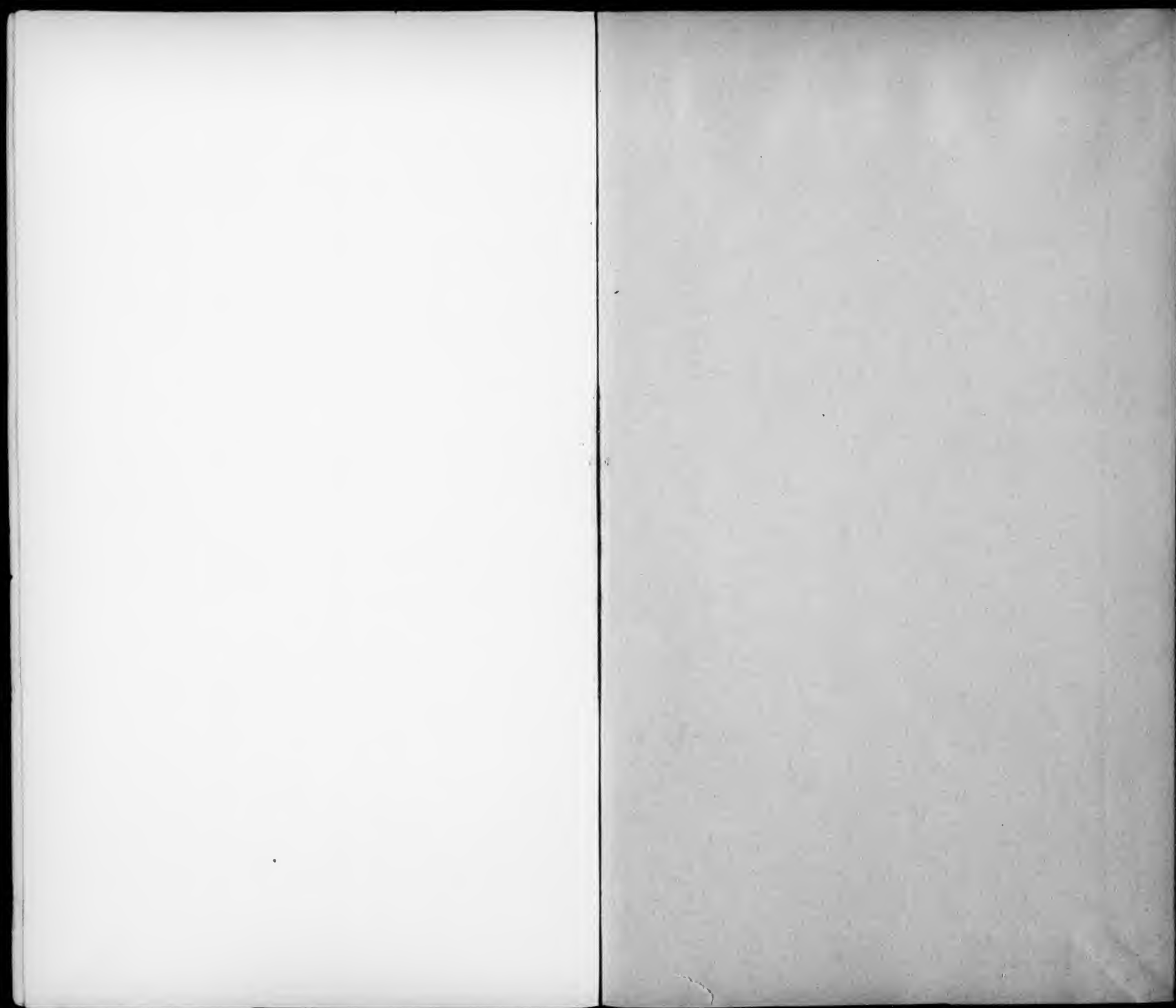
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